SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 548

ALFRED E. BUTLER, APPELLANT,

vs.

STATE OF MICHIGAN

APPEAL FROM THE RECORDER'S COURT OF THE CITY OF DETROIT, STATE OF MICHIGAN

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[fol. 1]

IN THE RECORDER'S COURT OF THE CITY OF DETROIT, STATE OF MICHIGAN

CRIMINAL WARRANT

HERBERT W. CASE, Complainant,

v.

ALFRED E. BUTLER, Defendant

STATE OF MICHIGAN,
County of Wayne,

City of Detroit, ss.:

To the Superintendent, or any Captain, Lieutenant, Sergeant, Detective or Patrolman of the Metropolitan Police Force of the City of Detroit, in said County, Greeting:

Whereas, Herbert W. Case hath this day made complaint to the undersigned, Hon. Gerald W. Groat a Judge of the Recorder's Court, of the City of Detroit, in said County, that heretofore, to-wit, on the 16th day of June, A. D. 1954, at the City of Detroit, and in the County aforesaid,

Alfred E. Butler, late of the City of Detroit, County of Wayne and State of Michigan, did then and there unlawfully sell, possess with intent to sell or offer for sale, a certain books or other thing, to wit: a pocket-sized edition book entitled "The Devil Rides Outside", by John H. Griffin, author, (a Cardinal Giant GC-14), Pocket Books, Incorporated, N. Y. Publishers, containing obscene, immoral, lewd or lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, and which aforementioned book, the said Alfred E. Butler did unlawfully sell, or offer for sale or possess with intent to sell;

Sec. 740.343 Act 74, P. A. 1953.

Contrary to the Form of the Statute, etc.

And Whereas, on examination, on oath of said Complainant, by me, the said Judge of the Recorders Court,

it appears to me that said offense has been committed, and there is just cause to suspect the said accused party to have been guilty thereof; Therefore,

In the Name of the People of the State of Michigan, You and each of you are hereby commanded forthwith to take the said accused party and him bring before the Recorder's Court, of the City of Detroit, at the Municipal Court Building, in the said City of Detroit, to be dealt with according to law.

Witness, The Hon. Gerald W. Groat, Judge of the Recorder's Court of the City of Detroit.

Given under my hand and seal, at the City of Detroit, in said County, on the 16th day of June, A. D. 1954.

Gerald W. Groat, Judge of the Recorder's Court of the City of Detroit.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 2] IN THE RECORDER'S COURT OF THE CITY OF DETROIT
RECORDER'S COURT MISDEMEANOR JOURNAL No. A-73

PLEA

File No. 15053

People of the State of Michigan vs. Alfred E. Butler

Offense: Sale of Obscene Literature

Defendant arraigned, pleads NOT guilty. Case adjourned to July 7, 1954, 9:00 A. M. Bail fixed at $500.00 personal surety.

Read, Corrected and Signed in open Court.

Gerald W. Groat, Judge of the Recorder's Court.

[fol. 3] IN THE RECORDER'S COURT OF THE CITY OF DETROIT

[Title omitted]

MOTION TO DISMISS

To the Honorable John A. Ricca, one of the Judges of the Recorder's Court of the City of Detroit:

Now comes the above named defendant by his attorneys, Manuel Lee Robbins and William G. Comb, and moves the Court to dismiss the warrant heretofore issued in this cause under Section 740.343 P. A. 1953, Title 25, M. S. A. Sec. 28.575, for the following reasons:

1. Because the provisions of Section 740.343 P. A. 1953, Title 25, M. S. A. Sec. 28.575, referred to and incorporated in the charges against the above named defendant are repugnant to the Fourteenth Amendment to the Constitution of the United States of America.

Argument

The said amendment, in pertinent part, states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statute provides,

> [fol. 4] "Any person who shall import, print, publish, sell, possess with the intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd, or lascivious language, or obscene, immoral, lewd or lascivious prints, pictures, figures, or descriptions tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth,

or shall introduce into any family, school or place of education or shall buy, procure, receive, or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

This motion is addressed to the fact that the said statute, in including in its prohibitions, a distribution of a book or other work "containing" the proscribed type of alleged obscenity is, on its face, therefore, so vague and indefinite in form as to permit within the scope of its language the punishment of incidents fairly within the guaranteed right of free press, protected against said interference by the said Amendment.

The defendant also moves the Court to dismiss the said warrant on the ground that the said statute by inclusion of the word "containing", permits on its face, a finding or judgment of obscenity on only part of the book and without consideration of the entire book and the relationship of the disputed passages to its theme, and is therefore, to that extent, a violation of defendant's freedom of press guaranteed to him by the said Amendment.

Finally, the defendant also moves the Court to dismiss the warrant on the ground that the said statute on which the charge is predicated, on its face incorporates a definition of obscenity which blanketly prohibits and punishes the circulation of a book to anyone because of the effect it might tend to have on minors and therefore deprives the [fol. 5] defendant of his constitutional right of freedom of press protected from state interference by the said Amendment.

Respectfully submitted, Manuel Lee Robbins, 30 Broad Street, New York 4, New York, William G. Comb, 1512 Dime Building, Detroit 26, Michigan, WOodward 2-6256, Attorneys for Defendant.

[fols. 6-7] IN THE RECORDER'S COURT OF THE CITY OF DETROIT

No. 15053

The People vs. Alfred E. Butler, Defendant

Transcript of Trial

Proceedings had and testimony taken in the above entitled cause before the Honorable John A. Ricca, Judge of The Recorder's Court, in the City of Detroit, Michigan, commencing July 7, 1954.

APPEARANCES: Mr. George D. Kent, Assistant Prosecuting Attorney on behalf of the People.

Mr. William Comb, and Mr. Manuel Lee Robbins, on behalf of the Defendant.

Reporter: A. L. Kirk.

Typist: Mae Line.

[fol. 8] The Clerk: Alfred E. Butler.

The Court: Both sides ready?

Mr. Kent: Ready.

Mr. Comb: Ready.

The Court: In order that this may be clearly understood, I see no request for a jury trial in the file, so I take it that no right is being taken from the defendant in proceeding without a Jury?

Mr. Comb: That is right, your Honor. We will file a waiver.

The Court: No waiver is necessary in a misdemeanor case. In other words, the rule, we proceed without the filing of a waiver, but I just don't want that to occur, either here or anywhere else later. You are entitled to a Jury Trial if you so desire, and I think I should inform you of that fact at the outset. Do you wish to proceed then without a jury?

Mr. Comb: That is right.

Mr. Kent: I can make the motion.

May it please the Court, I'd like to introduce Mr. Manuel Lee Robbins, an attorney and counsellor of New York, and move at this time for the Court's permission to

permit Mr. Robbins to practice in this Court for this particular case. I have met Mr. Robbins on a number of prior occasions and he has impressed me as the type of person that would do justice to justice in this Court.

The Court: I take it that he is admitted to practice in his home State and has practiced for some time?

[fol. 9] Mr. Kent: He is and bears a good reputation there.

The Court: And he may be admitted to practice here and receive all the courtesies local attorneys receive and you are welcome in this case.

Mr. Robbins: Thank you, your Honor, and thank you, Mr. Kent.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Kent: You are welcome. I think we ought to have the defendant present.

I understand, may it please the Court, that attorneys for the defendant have filed a motion to dismiss this proceedings.

The Court: I have before me a motion to dismiss, and also a very lengthy brief in support of their motion.

Mr. Kent: Yes, I received the brief just two moments ago, although I did receive the motion to dismiss in its written form yesterday afternoon. I am prepared at this time, may it please the Court, if counsel for the defendant wishes to stipulate that their position will be——

The Court: There will be no stipulations in this case. This is a charge with the violation of a Statute. We are stipulating nothing. It's up to the People to prove their position.

Mr. Kent: I merely wished to state that, to ask the defense whether they are willing to submit their motion to dismiss in written form, and I have not had an opportunity to write-up, but I would like to answer that in oral form [fol. 10] and perhaps that would be sufficient for the purpose of the record.

Mr. Robbins: If your Honor please, as counsel said, our position has been made in written form and our arguments are mainly confined in the memoranda which have already been submitted to your Honor, and copies served on counsel, and I have no objection to hearing from the

other side as to their answer to the motion. I also would have no objection, if your Honor so ruled, to letting him submit a written memorandum some time later in the action, if your Honor wishes to reserve judgment on it.

The Court: You appreciate the reason for my actions?

Mr. Robbins: I understand about stipulations in a criminal case.

The Court: But also, if this case should ever be reviewed, I don't want to go up on any stipulations. I want it to go up on evidence and rulings of law. So that if it's determined here, and I am wrong, I will be corrected by other Courts. If I am right, I hope to be sustained.

With that understanding, we will proceed then on the argument on the motion. You've made your motion, so there is no written motion, defense counsel has no objection to your filing a written brief later in opposition to his brief that he has here.

[fol. 11] Mr. Kent: Thank you, your Honor.

I note on counsel's motion to dismiss, that that motion is directed mainly and completely to the question that this proceeding, that this Statute violates the Constitutional——

The Court: Supposing we hear from the mover, so that it will also be in the record.

Mr. Kent: Sure, your Honor.

Argument of Mr. Robbins on Motion to Dismiss

Mr. Robbins: Well, if your Honor please, may I say at the outset that this motion is directed principally to seek the protection of the Fourteenth Amendment of the Constitution of the United States of America, and that phrase of it which protects the privileges of immunities of the citizens, of the States, or the blanket protection that no State shall deprive any person of life, liberty, without due process of law. I also wish to add, and it does not appear in my written motion, that there is a Freedom of Press protection in the Michigan Constitution as well, and to the extent to the arguments made here on Freedom of the Press in the United States Constitution I want it known that I invoke the protection of this Constitution of this State as well. I am going to be brief, as I said, both motion papers bluntly set forth the claims, give the authori-

ties upon which I rely. Actually, the gist of our motion, while divided in three claims, is based on the word "containing" in the Statute. We object in this motion, to the constitutionality of this Statute, because the word "containing" has two effects, with respect to the individual's [fol. 12] Freedom of Press.

In the first place, we take the position that to permit a prosecution of a book containing any obscenity, obviates the whole standards of obscenity and the Freedom of Press which have been laid down in the last decade of years. Now, it is true, and everybody recognizes if a book is really obscene, that the Freedom of Press does not protect it from being circulated. The judgment comes down in each case, as to what the test of obscenity is. If the book is not obscene, and there is a wrong test set forth in holding a book to be obscene, it is equally apparent that no State may prosecute the book or prohibit its circulation under the guise of a police power. However, if a book is obscene and the correct legal test is obtained in evaluating its obscenity, the book may be forbidden in circulation. [The word "containing" here has this effect. It does not permit the trier of the facts to judge the work as the whole, or to judge the dominant effect of the work.] It permits isolated passages or excerpts from the book to control whether or not the book may be circulated, or whether anybody may be freely—may freely publish and distribute the book.

The second ground is that because of the word "containing" here, it sets up a vague and indefinite standard that no person would be able to ascertain whether or not the particular book or particular article be distributed, could [fol. 13] in effect be distributed with impunity.

The third reason does not necessarily apply to the word "containing." The third basis of our motion is the fact that the whole definition of obscenity which appears in this Statute, is, in my opinion, one which forbids the distribution of this book to any adult at any time, because of some probable effect it might have on children. Therefore, I say that is an unconstitutionally broad invasion of the right of Freedom of Press to fob off from the circulation of the adult world a book, because to a more limited class it might tend to have some harmful effect, and I say you

cannot, therefore, restrict publications and the Freedom of the Press in that way. The authorities, I won't labor the point with you now, they are set forth in our memorandum of law, and I feel that between the motion papers and our memorandum of law, that I shall not burden the record any further.

Teh Court: In other words, your third point goes both as to the Michigan Constitution and the Federal Constitution?

Mr. Robbins: I would say, I should like that all three points, I should like to invoke the protection of the Michigan Constitution, Freedom of Press, on all three points because freedom,—the definition of Freedom of Press is such that it could not be unconstitutionally deprived under the Michigan Constitution as well as under the Federal Constitution.

[fol. 14] I say it's a vague and indefinite Statute that does not view the book as a whole, is an invasion of Michigan's guarantee of Freedom of Press. I should like to invoke the Constitution of Michigan on all three bases.

Thank you, your Honor.

The Court: Let me ask one more question. Your point as to this book being, or at least being, the constitutional provisions being violated, because a book which might be obscene to a young person might not be obscene to an older person. Now, in that Section, do you claim that there is a way that you can have a book so that no youngster could read it, or no growing child or growing boy could read it?

Mr. Robbins: Well, I don't know about "could read it", because as to whether a child or growing minor could read it, may in many instances apply to the parental influence of the home. I want to point this out, we are not dealing here with a Statute that prohibits sales to minors, so that problem is out of it.

The Court: The only time minors appear in this Statute as I see it, is in your description tending to incite minors, deprave, immoral acts, and so forth. Now, this book that is sold, for the purpose of the motion now, not in your case, you will have to prove that. This book that was sold is similar to the one that's been furnished to the Court, is that right?

Mr. Robbins: That is right.

The Court: The paper book that appears, or if the ruling should be in your favor, would appear in drug stores, and book stores, and so forth, for sale?

[fol. 15] Mr. Robbins: That is right, freely accessible throughout the entire community. Its method of distribution make it readily accessible throughout the entire community.

The Court: To both——

Mr. Robbins: To the entire community.

The Court: Mr. Kent?

ARGUMENT OF MR. KENT ON MOTION TO DISMISS

Mr. Kent: Yes, your Honor. May it please the Court, in answer to the defendant's motion to dismiss, based upon the three enumerated grounds that counsel has just stated, may I say this: That the Statute under consideration being Section 750.343 of the Compiled Laws of Michigan for the year 1948, as amended by Act No. 74 of the Public Acts of 1953, come under the police power to regulate matters falling within the health, safety, or welfare of the State.

The Court: You mean under the general police powers, not the powers of a policeman?

Mr. Kent: That is right, your Honor.

The Court: Very well. As long as we distinguish that. That's no reflection on Inspector Case.

Mr. Kent: That's merely for the purpose of clarification of the record.

The Court: Just clarifying the situation.

Mr. Kent: I now quote directly from the language of Mr. Justice Frank Murphy in 1942, in the case of Chaplinski vs. New Hampshire, 315 U. S. 568.

> "It is important to the exercise of a State's police [fol. 16] power to minimize all incentives to crime. Particularly in the field of sanguinary or salacious publications with their stimulation of juvenile delinquency. The publications are subject to control if they are lewd, indecent, obscene or profane, and this is so, even allowing the broadest scope to the language and purpose of the Fourteenth Amendment."

Now, the question in the motion was propounded as to whether the Statute is so uncertain, vague and indefinite in form as to fall under the due process requirement of reasonable definiteness and certainty in a criminal statute, particularly since it restricts the exercise of free speech or press, or under general heading of Freedom of Expression. We say no, the Statute prohibits matters that tend to incite minors to depraved or immoral acts or matters which tend to corrupt the morals of youth.

The Court: It really prohibits any books containing any material that tends to do that.

Mr. Kent: That is right.

The Court: Very well.

Mr. Kent: It does not attempt to define those matters, which come within the purview of the Statute. It leaves each individual case to the determination of a Court or a jury on the question of fact. I am quoting from People vs. Lathers, 223 Michigan, page 92.

> "Obscenity was indictable at common law on the ground that what tended to corrupt society, amounted to a breach of the peace from Seven American Deci- [fol. 17] sions, page 632. The constitutional liberty of speech and of the press extends its protection, provided all such publications are not blasphemous, obscene and scandalous in their character as to that they become an offense against the public. The constitutional protection shields no one from responsibility for abuse of the public peace and dignity. Obscene publications are outside the protection of this provision of the Constitution. State vs. McKee, 73 Connecticut 18. State vs. Van Wie, 138 Missouri, 227. Obscenity being a common-law term. In fact, in passing, it's been on the Statute books in the State of Michigan since the year, I believe, 1846, well beyond a hundred years."
>
> "Since it is a common-law term it has a well understood judicial meaning, and very practical considerations dictate that without a broad Statute, it would be difficult to control indefensible pornography, having no literary justification whatsoever."

I am quoting now from the case of Winters vs. New York, 38 U. S. 507.

The Court: That, I take it, is going to be probably the crux of this case, your last qualifications they have no literary value whatsoever.

Mr. Kent: Well, that is a question of fact to be determined by the Court, as to whether or not there is license——

[fol. 18] The Court: You see, but your Statute doesn't seem to say that. Your Statute seems to say regardless of how it's rated as a literary work, if it contains obscene parts.

Mr. Kent: Part.

The Court: That's a violation of the Statute. So those cases tend to show that if the book in itself is of literary value, and that the purpose of it is not just to put out an obscene book, and while we are on that subject, I might say, Gentlemen, that I am not going to try this case, as long as you've waived a jury, I am not going to try this case by comparison with other material that is on the market or is not on the market, or hasn't been taken off.

Mr. Kent: That is right. I think there is good law to back up your Honor on failure to make comparison. But on this particular point, I think your Honor may not have construed my language properly. I believe that I'm at fault for not stressing it sufficiently. May I——

The Court: Don't apologize, if I misunderstood you. Just say so.

Mr. Kent: It could be that you have, knowing you.

The Court: Go ahead.

Mr. Kent: The import of that Section, of that sentence which I just completed is that obscenity is so well known, that things which are obscene are so easily recognized not only by law people, but by the Courts, and I say that, not [fol. 19] derogatory, but merely for—to make the comparison, because the Courts are deemed to be all wise, and must ultimately make the judicial determination, that if the Statute permitting the publication of things of this sort, which contained a small part, even, of anything lewd, lascivious, obscene or immoral, if such a Statute were not as broad as it was, then things which are definitely, unquestionably lewd, obscene, immoral, would then be able

to be published and passed and sold with immunity. That is the import of that, where it says "It would be—" "Without a broad Statute, it would be difficult to control indefensible pornography, having no literary justification whatsoever." Such as smutty pictures, or bad language, which can in no way come within any justification of literary art or literature at all.

Now, to go to the next point raised by counsel, does the Statute by the inclusion of the word "containing" constitute a violation of the Freedom of the Press guarantee, we again say no for the following reasons:

The non-obscenities contained in a book, or writing or publication, do not or cannot *irradicate* the objectionable portions which are clearly obscene.

The Court: What's that citation?

Mr. Kent: Well, that's from George Kent. That's dicta.

The Court: In other words, that's controlling, at least.

Mr. Kent: No, it is not. That is my opinion. My con-[fol. 20] clusion arrived at by reading the cases which I will cite to your Honor.

The fact that the disgusting details are served up in a polished style, with exquisite settings and perfumed words, makes it all the more dangerous and insidious and none the less obscene and lascivious. I have a citation to that one. That's from Halsey vs. New York Society for the Suppression of Vice, 234, New York First, page 14. To most Courts, the literary qualities of a book are important. But, as your Honor just stated a few minutes ago, are not conclusive. That's U. S. vs.—one book called Ulysses, Federal 72 Second 705.

The Court: Give me that again.

Mr. Kent: United States vs. One book called Ulysses.

Mr. Robbins: If your Honor please, to save your hand at the moment, every one of these cases have been cited in our brief. You will find the citations there.

The Court: I don't mind writing.

Mr. Kent: People vs. Van Guard Press, 84, New York Supplement, Second, 427. St. Paul——

The Court: Don't forget that I don't write shorthand. What's that number?

Mr. Kent: 84, New York Supplement, Second.

The Court: Yes.

Mr. Kent: Page 427.

St. Paul vs. Fred Gugg, 38 Minnesota, Municipal Court, 362. Do you have that, your Honor? Whether a book is or is not obscene, cannot—here we are right on the point [fol. 21] you raised—whether a book is or is not obscene cannot be determined by comparison with standard and established works of literature. Criminal acts unpunished will not justify other criminal acts. In other words, maybe some book has slipped by, and comparison may be thought to be brought between the one and the other. Or maybe on the basis of the fact that some books were published way before you or I were born or this book ever thought of, and has gone down in history as an established work of art. In and of itself, certain portions of it may be obscene, may be pornographic. But that does not excuse the particular book with which we are concerned.

The Court: Well, that's what I had in mind when I said that, because what is it the Chinese said, one picture is worth five thousand words, or something like that. Some of this trash they put as cheese cake, the movie world calls it that, may be even more damaging than this, but I am not going to try it on that basis whatsoever. Just on the Statute alone and the construction of the book.

Mr. Kent: I have three citations there I'd like to give your Honor.

The Court: Very well.

Mr. Kent: Commonwealth vs. Buckley, 200 Massachusetts 346. Section 340 of Volume 8 of Ruling Case Law. And the United States vs. Bennett.

The Court: (Spelling) B-e-n-n-e-t-t.

Mr. Kent: 39 Federal Second at page 564.

Now, the last question was raised as to whether or not [fol. 22] the Statute incorporates a definition of obscenity, and by the incorporation of a definition, does it, therefore, deprive the defendant of his constitutional rights, of the Freedom of the Press? The answer, of course, will be no, from the People's viewpoint. We say that the Statute, and I think that would be obvious for your Honor's reading of the Statute, the Statute merely prohibits the publishing, selling, and so forth of printed matter or other

things found to be obscene, immoral, lewd or lascivious, which tend to incite minors to violent, depraved or immoral acts.

The Court: I take it, that last part is what you claimed defines obscenity?

Mr. Robbins: Yes, the modification of obscenities which I claim it is a modification.

Mr. Kent: The Statute itself nowhere, attempts to define what is or is not obscene or immoral. It leaves each case rest on its particular merits or lack thereof, and each case becomes a question of fact for the Court or the jury. And I am quoting from People vs. Lathers, 223 Michigan, page 92.

The Court: Just a minute, People vs. Lathers?

Mr. Kent: 223 Michigan, page 92. Conda vs. the United States, 22, Lawyers Reports Annotated, page 304.

People vs. Friede (spelling) F-r-i-e-d-e, 271, Massachusetts, 310.

Commonwealth vs. Buckley, 200 Massachusetts, 348.

The Court: Just a minute, Commonwealth vs. Buckley?

Mr. Kent: I think your Honor has that citation, I quoted [fol. 23] it previously.

And People vs. Seltzer, 203 New York Supplement, page 809.

The Court: What is that citation?

Mr. Kent: 203 New York Supplement, page 809.

Based upon the foregoing reasons, may it please the Court, I ask either one of two things: Either that the defendant's motion to dismiss be denied at the present time, or, if your Honor so desires and that maybe the wisest course, all things being considered, to take such motion under advisement until your Honor has heard some testimony, and at that time make the decision.

The Court: I just wondered whether my withholding the decision on the motion would in any way impair the rights of the defendant. In other words, whether or not they are entitled as a matter of law, to have this motion determined before the presentation of evidence. Do you have anything to say on that, Mr. Comb or Mr. Robbins?

Mr. Robbins: If your Honor please, I appreciate that the motion was served only yesterday. The memorandum

of law was only served this morning. [The question is not one which is easily disposable, the answer of which may be obvious and accordingly, I understand that the Court would need some time to study the question.] Since I have out-of-town witnesses in Court, I should like to proceed with the case and let your Honor come to his conclusion at whatever time he can.

[fol. 24] The Court: Very well, the Court will reserve decision on the motion to dismiss, the defendant having no objection to that. We may proceed to take testimony.

Now, I would like, first, to meet with counsel, because after all, some of these passages are delicate. Some of these passages I don't mind telling you, so far I am only on page 123 and there are over five hundred pages.

Mr. Kent: 579.

The Court: However, I was pleased that the book was handed to me before the case commenced. So, I don't know whether or not it might not be advisable, rather than take issue here in the open, whether or not we couldn't sit down in my chambers, counsel for both sides, and arrive at some way of handling this without making this more obscene than the book is charged with being.

Mr. Robbins: I certainly would be glad.

The Court: Because there are some children in the Courtroom, and I think probably we should proceed some way so that it's agreeable to all concerned.

Mr. Kent: Certainly, your Honor.

The Court: And having the interests of citizens at heart, I think that we will recess here for a few minutes and just go in the back room and take this matter up.

(Court in recess.)

The Court: Proceed with your proofs, Gentlemen.

[fol. 25] HERBERT W. CASE, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct examination.

By Mr. Kent:

Q. Would you state your full name, please?

A. Inspector Herbert W. Case.

Q. You are an Inspector on the Detroit Police Department?

A. I am.

Q. And are you in charge of what is known as the Censorship Bureau of the Detroit Police Department?

A. Yes, the License and Censor Bureau.

Q. How long, Inspector Case, have you been a police officer?

A. Twenty-three and one-half years.

Q. And how long have you been attached to the Censor and License Bureau?

A. Since January 10th, 1937.

Q. And how long have you been in charge of that Bureau?

A. About the past five years.

Q. Now, did a book entitled "The Devil Rides Outside," written by John H. Griffin, published by the Pocket Books, Inc., come to your attention some time this year?

A. It did.

Q. And how was it brought to your attention?

A. This was brought to my attention by the Ludington News Company, a local wholesaler.

Q. The Ludington News Company are local distributors of Pocketbooks here, are they?

[fol. 26] A. They are.

Q. Was that book submitted to you for approval before it was placed upon sale?

Mr. Robbins: I object, your Honor.

The Court: Objection sustained. The offense charged here is the purchase and the sale—or the sale, rather, of the book. Let's get right down to whether he bought a book or whether he didn't, from this defendant.

Mr. Kent: All right.

Q. Now, however that book came to your attention, did you consult with the Prosecuting Attorney of Wayne County and place that book upon the prohibited list?

Mr. Robbins: Again I object, your Honor. I think the issue here is whether or not this book was sold and whether he consulted with any advisory.

The Court: Objection sustained again.

Mr. Kent: May it please the Court, I think that we have to show, and I think we should show to the Court, that this book——

The Court: I don't care whose list it was placed on. The question is, did he buy it, is it obscene. Let's stick to that.

Mr. Kent: All right.

The Court: I can't be controlled by any one's list. I have to make up my mind. Proceed along that theory, please.

[fol. 27] Mr. Kent: All right.

Q. On June 16, 1954, did you see the defendant, Alfred E. Butler?

A. I did.

Q. And do you see him here in Court now?

A. I do.

Q. Will you point to him, please?

A. Yes, he is the third gentleman on the right-hand side of the table from me.

Mr. Kent: Let the record indicate that the witness identifies the defendant, Alfred E. Butler.

Q. Where did you see him on the morning of June 16, 1954?

A. At the Camera Shop on Fourth Avenue, I believe.

Q. Is that known as the Quality Photo Shop?

A. Quality Photo Shop on Fourth Avenue, I believe it's 3743.

Q. Is that in the City of Detroit?

A. It is.

Q. Did you purchase something from him?

A. Yes, I purchase- the pocket-sized edition of the novel "The Devil Rides Outside."

Q. And did you pay him some money for it?
A. I did.
Q. How much did you pay him?
A. I have a receipt, if you would give me the book, please. That's it.
Q. Just tell us the price.
A. For fifty cents, and two cents sales tax, total of fifty-two cents.

Mr. Kent: Mark this, please.

(Whereupon a document was marked People's Exhibit No. 1 by the Reporter.)

[fol. 28] The Court: So we won't waste time on non-essentials, is there any question at all but what this book was sold to the Inspector?
Mr. Robbins: I have no such question, your Honor.
The Court: Very well. Proceed with that understanding.

Q. You did receive a receipt to show that you purchased that on that date from Mr. Alfred E. Butler at that time, and at that place?
A. I did.
Q. I will show you, Inspector Case, People's Proposed Exhibit No. 1, purporting to be a Pocket Book edition of the book "The Devil Rides Outside" by John H. Griffin, and ask you to look at the article in question and tell us whether or not that is the book which you purchased from Alfred E. Butler on that particular date?
A. This is the book that I purchased from Alfred Butler.
Q. Did you read this book?
A. I did.

Mr. Kent: May it please the Court, at this time I will offer the book in evidence.
Mr. Robbins: I have no objection.
The Court: Very well, it may be received.
Mr. Comb: Exhibit No. 1?
Mr. Kent: As Exhibit No. 1.

Q. Did you then place the defendant under arrest?

A. I did.

Q. And you brought him here in Court?

[fol. 29] A. I did.

Q. What did you charge the defendant with, Inspector Case?

A. I charged him with the——

Mr. Robbins: If your Honor please, the charge is before the Court, the Court has judicial notice of that.

The Court: Very well, objection sustained. In order to expedite things, I am showing you the complaint filed in case No. 15053, against Alfred E. Butler, and ask you if that is your signature?

A. That is my signature.

The Court: And you swore to that before Judge Groat or his Clerk?

A. I did.

The Court: And upon that complaint, a warrant was issued out of this Court, signed by Judge Groat at the time the complaint was filed, is that correct?

A. Yes, your Honor.

The Court: Charging him with a violation of this Section we've been referring to, the complete Act with its Amendment, Section—is Act 84, rather, of the Public Acts of 1953?

A. That is correct.

Mr. Kent: That's Act 74.

The Court: 74, I read that wrong.

Mr. Robbins: Your Honor please, I have never seen the complaint. May I see a copy of it?

[fol. 30] The Court: We have no copies, just the original. So you can examine that.

Mr. Robbins: Oh, thank you.

Mr. Kent: May it please the Court, I believe that's the People's case, with the submission to the Court of the book in evidence, the Court must then make the determination as to whether or not, without permitting the People to go into proof of its obscenity, and without permitting the People to show upon what basis the Inspector caused Mr. Butler's arrest.

The Court: Well, I understand after a conference here,

that there are several excerpts taken from this book, excerpts numbering how many?

Mr. Kent: One hundred one. (101)

The Court: 101 Excerpts taken from the book, upon which the complainant based his request for a warrant, is that correct?

Mr. Kent: That is correct.

The Court: You want to mark that as an Exhibit?

Mr. Robbins: Your Honor please, if it is marked as an Exhibit, I am going to record on my part, the introduction——

The Court: He is not introducing it. Our practice is this: Instead of proposed or, what is the other word they use a lot?

Mr. Kent: Purported.

The Court: We mark them Exhibit, but they are not in evidence until admitted.

Mr. Robbins: Thank you.

[fol. 31] The Court: Merely marked for the purpose of identification.

Mr. Robbins: I understand.

(Whereupon a document was marked People's Exhibit No. 2 by the Reporter.)

Mr. Robbins: Your Honor, I am also a little confused that the Prosecutor has rested before the cross-examination of this witness. I would have assumed that because otherwise, his resting is now——

The Court: I think he has re-opened.

Mr. Kent: I haven't rested, in view of your Honor's previous ruling, I intended to submit the book, submit the sale and felt that that would be sufficient to make out our prima facie case. However, on further suggestion, I am going to re-open it to offer into evidence now, I will show Inspector Case People's Proposed Exhibit No. 2, and ask you, Inspector Case, are those the excerpts which you took from the book "The Devil Rides Outside," and used as the basis for your arrest of the defendant, Alfred Butler, for the sale of——

Mr. Robbins: I object to the basis of what his arrest was. If I want to identify this particular document, he

has in his hands as manufactured or prepared by him, I have no objection to that. But as the basis of the arrest, I do object to that.

Mr. Kent: He has to have some basis for the arrest.

The Court: We get back to the argument you had on the motion. Counsel's contention is that the whole thing must be taken as a whole and he is preparing that for the [fol. 32] next objection, I take it, that he is going to object to the introduction of that. So you have taken these excerpts, is that right, from the book?

A. I have.

The Court: And these excerpts are those that you feel were objectionable?

A. I did.

By Mr. Kent:

Q. And you are familiar with the State's Statute covering this particular book, are you?

A. I believe I am.

Mr. Robbins: I object to his familiarity with the subject. It's irrelevant.

The Court: I am sure he is familiar with it, because he's in charge of it.

Q. That's the Statute under which you operate?

A. That is right.

Q. Those are the excerpts which you have taken?

A. They are.

Q. You've had them prepared?

A. I have.

Q. And they are numbered by pages, are they?

A. Yes, numbered by pages.

Q. And they are also marked for identification as 1, 2, 3, and so forth, up to 101, is that correct?

A. Yes, that is correct.

[fol. 33] Mr. Kent: All right, I will offer the Exhibit into evidence, may it please the Court.

Mr. Robbins: If your Honor please, I should like at this time to record my objection. I think what was stated by me at the opening motions of this case, directed to the dis-

missal of the proceedings, I would like to repeat here except that I do not like to take up the unnecessary time of the Court. I am contending throughout this litigation, that this book must be viewed as a whole. That any other view of this book or any other application of rule of law permitting it to be judged by excerpts or to enforce the statutory concept "obtained," and that it is not the applicable rule of law in judging obscenity cases. I've stated my objections under the Fourteenth Amendment and the Constitution of the State of Michigan and, hence, my objection to this.

Mr. Kent: I think my views are also on record, may it please the Court.

The Court: The Court takes this position at this time. I have not read the complete book. I intend to. Now, whether I base my decision on the complete book afterwards or the excerpts contained in there will be a matter for my opinion there. So, without passing on that matter now, I am going to permit the excerpts in evidence, merely to facilitate the questioning, identification, rather than having the book brought in and marked and then remarked, and so forth. In other words, to expedite the handling of the trial. It's referred to both as the number of the excerpts and, as I understand it, also the page in the book [fol. 34] where it is found. Very well, I am going to permit the Exhibit in evidence at this time.

Mr. Kent: Thank you, your Honor.

The Court: Under those circumstances——

Mr. Robbins: I have only this thought, your Honor, and I appreciate that I haven't fully thought it out. In the happenstance that you should consider, after all your deliberations are over, that the book must be judged as a whole but that you should—that you would find that the book judged as a whole was an obscene book, would you then delete the excerpts?

The Court: That would depend how I felt at the end of all the testimony. I am reserving that.

Mr. Kent: In order to do that, your Honor would have to find that the Statute as it exists in Michigan is unconstitutional.

The Court: I haven't said what I am going to find.

Mr. Kent: I said to later on do that. Do you wish to cross-examine?

Mr. Robbins: Yes, sir.

[fol. 35] Cross-examination.

By Mr. Robbins:

Q. Inspector Case, I certainly do not like to pry into your personal life, but you are over twenty-one?

A. That is right.

Q. And were you aware that this book had previously been distributed in the City of Detroit?

Mr. Kent: I will have to object to that, may it please the Court.

Mr. Robbins: The reason of the question, if I may explain it, is that it goes along the line of the statutory definition of books cannot be sold which may be offensive to children. At the moment, we are not dealing with the case of a child or any evidence that was read by a child.

Mr. Kent: Well, that, of course, is immaterial under the Statute. The Statute is aimed at protecting the young people.

The Court: I appreciate that and I don't want any decision I make to be construed that I am not concerned. However, I think what you are driving at is that this is in the Library, is that it?

Mr. Robbins: I am coming to that.

The Court: Go ahead. I think the full facts should be known.

By Mr. Robbins:

Q. Were you aware, Inspector Case, that before the advent of the sale to you in this particular case, that this book was presently in the Library of the Detroit, I think, [fol. 36] Free Public Library, were you aware that the book was there?

A. I was not.

Q. Are you aware now that the book was there?

A. I am aware that it was on the closed shelf. I made inquiry.

Mr. Kent: I object to hearsay.

The Court: Wait.

Mr. Robbins: I think there will be witnesses.

The Court: Just a minute. In the first place, what do you mean by a closed shelf?

A. I believe I made that statement.

The Court: That's what I mean, you said "closed shelf." Now, for the purpose of the record, what do you mean by closed shelf?

A. That was what they have for restricted outlet. That is not for general distribution. They have reviewed, I believe, to the best of my knowledge, certain books which they do not feel should be in general circulation and they are then placed for those who know of the book, know about it, and a special request usually, to an adult.

The Court: You mean they have a system in our Library here, where only certain people,—or certain people can read it? In other words, what's immoral for one can't be immoral for another. I don't get the point.

A. I wouldn't be able to say what their reasons are, your Honor. But I have been told that they do have a restricted shelf, or a closed shelf.

[fol. 37] Mr. Kent: In other words, not for the general public use.

Mr. Robbins: If your Honor please, I have subpoenaed witnesses from the Detroit Public Library, who are in Court and who I expect to produce, and I shall have the whole system of the way this book was possessed and on call by the Public Library before this Court. I don't think that Inspector Case would know the full workings out of the Library system.

The Court: That may be, but my idea is this: If the thing is immoral, is it a privilege a few of us be immoral and the rest of us not to.

Mr. Robbins: I share your confusion on that.

The Court: Very well, we will wait until it is clarified.

By Mr. Robbins:

Q. You were aware that another edition of this book had been circulated in Detroit, what is called a hard cover edition?

A. I was not.

Q. You were not aware of that?

A. No, sir.

Q. After this case was started, you knew of that?

A. After this purchase was made, I personally called the Public Library.

Q. Quite apart from the Public Library, you did not know that this book in its present condition, I am exhibiting to you, a hard cover edition.

The Court: I suggest it be marked an Exhibit.

[fol. 38] Mr. Robbins: I can't mark it an exhibit, this is a Library copy. I think I will withdrew the question.

The Court: That doesn't make any difference, if you are going to use it, we can refer to it as Defense Exhibit 1 without marking it and identifying on the record what it is.

Mr. Robbins: All right. I should like to have marked —deemed marked, I don't know if that is in accord with your practice, deemed marked?

Mr. Kent: We will have it considered so marked.

Mr. Robbins: That is what I am trying to avoid. For identifying purposes, a hard cover edition of the work "The Devil Rides Outside" by John H. Griffin, which was published by Smiths, Inc., Fort Worth, 1952, and which, on its back, hard cover flap is indicated as a book of the Detroit Public Library, No., Loan No. 1864116.

The Court: May I see that book? I think for the purpose of identification, also should say that this has a Griffin Z3 on it and a "Z" 3, whatever that means later, and I suppose the people from the Library can tell us about it when the proper time comes. I don't know whether that loan ticket in there is the number given, or the number of some person rather than the book, because it's on a separate slip there.

Mr. Kent: May it please the Court, before your Honor makes a ruling as to admission or not, I think mayhap we ought to have an opportunity——

The Court: I am not going to admit it at this time, except I am going to permit questions be asked and then [fol. 39] when the Library men come, the Exhibit may be admitted and it may not, I don't know.

By Mr. Robbins:

Q. In any event, referring to this.
The Court: It's Defense Exhibit 1.

By Mr. Robbins:

Q. Defense Exhibit 1, after you were called to the Library, you were made aware of the fact that the hard covered edition had previously appeared in Detroit?
A. It must have, because it was—they simply told me that "we have it on the closed shelf."
Q. Did you make any inquiry after that as to whether or not these books were sold by book stores in Detroit?
A. Made two inquiries. Made one at the J. L. Hudson Company Book Store, and one at Doubleday Doran. There was none in stock.
Q. I am not asking you, I just asked whether you made such inquiries. Did you make any inquiry at the Public Library as to whether or not this book—I will withdraw that question.

Mr. Robbins: That will be all.

[fol. 40] Re-direct Examination.

By Mr. Kent:

Q. Did you go to the Public Library at any time and see that book?
A. I did not.
Q. Whom did you speak to over the telephone, do you recall?
A. Mr. Ulveling.
Q. That's Ulveling?
A. He's a Librarian.
Q. He is the Director of the Library Commission, is he not?
A. He is.
Q. You did not speak with him, did you?
A. I spoke to his secretary, I believe, the young lady in his office.
Q. Did you ascertain how many copies were available in the library?

A. I did not.

Q. Did you ascertain who might have the use of that book?

A. I did not.

Q. Did you ascertain how restricted the use of that book was?

A. I did not.

Q. You merely determined that it was there and was available on what they termed to be the closed shelf?

A. That is right.

Mr. Robbins: I object to the words "closed shelf."

The Court: That was the term used by the witness. Let's wait until the librarian comes in.

Mr. Kent: As long as the book is in evidence.

The Court: It is not in evidence.

Mr. Kent: As long as it has been referred to.

[fol. 41] The Court: I admitted limited use of the book for the purpose of identification and whether this witness has seen the book. Now, I think that if the book is offered later, certainly the restricted use can be told to us by the Librarian.

Mr. Kent: In fact, it appears on the book, your Honor, "for restricted use."

Mr. Robbins: Your Honor, he's still reading from an Exhibit which is not in evidence and I think the first witness for the Defense will clarify this.

The Court: Very well.

Mr. Kent: I have no further questions.

Mr. Robbins: I have no further questions.

(Witness excused.)

PEOPLE REST

Mr. Kent: The People rest, your Honor.

RENEWAL OF MOTION TO DISMISS AND RULING THEREON

Mr. Robbins: Now, your Honor, at this point, at the close of the People's case, I should like again to move—renew motions made at the start of the case, with respect to dismissal of the proceedings on the grounds there stated and also I should like to move at this time, at the close of the [People's case, that this Statute and proceedings are un-

constitutional on the grounds herein stated and also that the People have not proven a case against this defendant beyond a reasonable doubt. And the evidence adduced by the People shows it's unconstitutional.] That the crime charged against the defendant is unconstitutional and that [fol. 42] the guilt of the defendant of violating any law has not, therefore, sufficiently been established.

The Court: I don't know whether it will be due to the fact that the Court reads books very slowly or your excerpts very slowly, or your briefs very slowly. I do know that I have not completed reading anything but the brief and the motoin. I have read part of the book and I've read part of these excerpts. Without making any ruling on it now, I will ask defense counsel if they are willing that I reserve my ruling and permit the offering of testimony by the defendant, and my ruling can be made later. I say that, because I understand from defense counsel that they have witnesses who would like to go back to their home towns.

Mr. Robbins: Yes, your Honor.

The Court: So, with that understanding then, I will permit the defense to proceed. And, of course, if I should decide favorably on your motion, there not being a Jury to be influenced, I can disregard all that is said. So, proceed with your defense.

Mr. Robbins: Miss Harriett Good.

[fol. 43] HARRIETT GOOD, sworn by the Court Clerk on behalf of the Defendant, was examined and testified as follows:

Mr. Robbins: My associate will examine.
The Court: Very well.

Direct examination.

By Mr. Comb:

Q. What is your full name?
A. Harriett Good.
Q. By whom are you employed?

A. Detroit Public Library Commission.

Q. In what capacity, Miss Good?

A. Chief of Book Selection Department.

Q. What are your duties?

A. Together with the Service Directors, and the Department Chiefs of sub-departments, under the direction of Mr. Ulveling, Director of the Library, it is our responsibility to consider all materials that are accepted and approved for the Public Library.

Q. And is there a committee that passes upon the purchases of books to be placed in the Detroit Public Library?

A. As a democratic device for selection, we have a "Home Reading Committee, which consists of members of the branch library staffs, usually the chiefs of the libraries. Occasionally there are persons of senior library status who are also included in that committee, and they spend approximately one week's time, part of one week's time going over and reading and evaluating the materials which we [fol. 44] accept for the Home Reading Services."

Q. And that committee varies from week to week, does it not?

A. Yes, it does, Mr. Comb.

Q. Do you have with you the record of the Detroit Public Library on the committee that passed upon the book "The Devil Rides Outside" by Griffin?

A. Yes, I have.

Q. Will you produce that?

A. This card is the card that we use as a working card, and the names of the members, the last names of the members, are on the other side of the car-.

Q. Now, do you have with you the book "The Devil rides Outside?"

A. Yes, I have.

Q. And is that a part of the books of the Detroit Public Library?

A. It is a part of the books of the Public Library.

Q. How long have those books been on the Library shelf?

The Court: You mean this book?

Mr. Comb: "The Devil Rides Outside," this book.

A. These copies of the book were bought at varying intervals. The first copy of the book, I believe, was received

in January, January 12, 1953, as part of the Library collection. And on that basis it was entered as a book for restricted purposes, for restricted use.

Q. And it's listed in the Home Reading Department?

A. Yes, it is.

Q. And what do you mean by "restricted use?"

A. By restricted us-, we mean those materials which we [fol. 45] feel have value for a public library.

Mr. Kent: Excuse me, Miss Good. I think, may it please the Court, that now is the time to make the objection which ought to be made. I know that defense counsel does intend to inject opinions into evidence, and I would, therefore, like at this time to make my objections to such opinion evidence, based on the fact that Miss Good may be somewhat qualified to render an opinion as being chief of the Book Selection Department of the Detroit Public Libraries. However, I think in a case such as this, and I would like to quote your Honor some law on the subject, on expert testimony and opinion evidence.

The Court: Well, you don't need to go into the fact that where something is obviously something that every one knows, expert testimony is not admissible.

Mr. Kent: Your Honor is well acquainted with that?

The Court: Very well. Take it from there.

Mr. Kent: All right. And that expert opinion, of course, is only necessary where there are facts which are of such significance that they need scientific or peculiar explanation by those who do not comprehend those facts. My particular point at this time is that rather than an expert on what might be literary or might be good, what might be good in the Public Library, that these people whom the defense expects to bring, must show, in order to come here as experts, must show that they are in some way qualified to pass upon what is good for the reading public, and pass on immorality, which—whether a book does contain lewd, [fol. 46] lascivious and immoral subjects rather than the mere basic fact as to whether or not they've had prior experience in the literary field. And, I have the only legal reason for allowing evidence of opinions, is found in the presumption that an ordinary juryman or other person without special knowledge, could not understand the bear-

ing of facts that need interpretation. In the law of evidence, opinion is an inference or conclusion drawn by a witness. Whether any book is obscene or tends toward depravity and corruption of the mind is a question of fact for the jury. I think that your Honor, sitting as the Court and the Jury, is sufficiently as well qualified to pass on morality as any expert in the literary field might be.

Mr. Robbins: If your Honor please, I think—well, I have a great deal of objection of what my brother has said. I think that at the moment it is rather premature. We do not intend to qualify this witness as a literary expert. She is merely being asked to testify as to this Defense Exhibit 1 and the markings on it, and what the word "restricted" on it means, and she's giving us the Library practices and the Library method of doing business which would be admissible in evidence. The objection that he makes to opinion testimony, I have quite a contra-view, but in answer to Mr. Kent's statement, we have never taken the position that there should be experts as to morality. I agree with him fully. Our opinion is that there can be no experts. When we come to produce experts in this case, [fol. 47] it will be merely as to the literary value of the work. The obscenity is a question of fact your Honor will have to decide.

In this particular instance, we are not qualifying here, not giving out any qualifications as to her being an expert.

Mr. Kent: She has identified the book.

The Court: She has identified the book and more than that, she has stated her position there and has had at least something to do with marking this "restricted." Now, the Court in this case realizes that the personal background of each and every Judge placed in the position that I am placed, might have something to do with the decision made. I am far from being competent without the help of expert advice to pass on the literary value, except in my limited way. On the other hand, I would like to hear the opinions. I think they will be beneficial and helpful to the Court, the opinions both as to the literary value and as to whether or not it tends to corrupt morals. As to whether or not it is obscene and objectionable on that ground, because I want to start this case with a free and open mind. So, at this time, I am going to rule that

the experts may testify, which is what Defense Counsel wants, as to literary value, and I am going to overrule his objection as to literary value in connection with the interpretation and the morality clause in the Statute. So, I am going to permit both sides to put in what I believe would be helpful to any Court in determining this case.

[fol. 48] Mr. Robbins: There was an unanswered question.

By Mr. Comb:

Q. What do you mean? What is the Library's interpretation of that?

A. "It is the judgment of the persons involved, that the book has literary value. It should be represented in the Public Library. However, it should not be promoted.

We consider books placed on the open shelf as books which we are willing to say we promote. The closed shelf of materials are available to adults who ask for them, and they are not placed freely for accessibility for any one at all, there is restricted use."

The Court: Just a minute.

(Discussion off the record.)

By Mr. Comb:

Q. I see, Miss Good, that you have brought one of the books with you "The Devil Rides Outside?"

A. Yes.

Q. I will show you this volume that I have in my hand, that has been identified as the Defendant's Exhibit No. 1, and ask you if you can identify that book?

A. Well, this is the Home Reading Department. It is Copy 3 of the Fiction title "The Devil Rides Outside," by John Griffin.

Q. And the book that you have in your hand, Defendant's Exhibit No. 1, is a book belonging to the Detroit Public Library?

A. Yes, it is.

Q. And it is placed upon their restricted shelf?

A. Yes sir, with the label so indicated.

[fol. 49] Q. And that label you refer to, is on the reverse, on the back cover?

A. Yes, it is.

Q. Will you read the entire label?

A. "This book was purchased——"

The Court: Are you now offering it?

Mr. Comb: I am going to offer the book in evidence.

Mr. Kent: I just want to ask a couple of questions as to the book itself.

The Court: Very well.

Mr. Kent: Before I either object or agree to have it into evidence, may it please the Court.

Cross-examination.

By Mr. Kent:

Q. Now, Miss Good, have you made a comparison of this particular Exhibit, Defense Exhibit No. 1, with any pocket size edition of the book?

A. No, I have not.

The Court: Have you seen this before?

A. No, I have not.

By Mr. Kent:

Q. Do you know whether or not there have been any deletions in this hard cover book than what appears in the soft paper bound cover book?

[fol. 50] A. I couldn't say that, I have made no comparison.

Mr. Kent: Well, may it please the Court, on those grounds, I am going to have to object to its introduction unless defense counsel can and will show that this hard covered book contains everything that's contained in the paper bound book.

The Court: Now, we are getting down to one point that has been bothering me somewhat. I see that you have in your hand a leather or clothbound cardboard covered book. I notice that in the sale of these other books, that on the cover sale of People's Exhibit No. 1, is that it?

Mr. Kent: That is right.

The Court: On that, you have on the cover certain statements. Now, without going into it, do you see on that covered book, leather, do you have it?

A. I have a copy.

The Court: Do you see on the cover there, anywhere before the story itself starts, "From lust and despair to the height of spirituality?"

Mr. Kent: The question is directed to you, Miss Good?

A. I do not see that, no. There is nothing like that on the cover of this book.

Mr. Comb: If the Court please, of course, the charge here is the contents of the book and not what is on the cover.

The Court: That's part.

Mr. Robbins: No, it is not charged as the contents.

[fol. 51] The Court: Anything in this Exhibit 1 is a content of that book, as far as I am concerned. I want that clearly understood. Do you see anything in that volume citing any recommendations?

A. Not in this volume as it stands.

The Court: Do you see anything there by, oh, Washington, D. C. News, Little Rock Gazette, The Book of the Month, and so forth, you see nothing of that?

A. No.

The Court: Does it have in any part of it, quoted from the Saturday Review of Literature?

A. It does not.

The Court: Now, People's Exhibit No. 1, which I take it this is a copy, does contain those matters, am I right, Mr. Prosecutor?

Mr. Kent: You are right, your Honor.

The Court: Now, has any one made a comparison, or is there any testimony later that can be shown to the Court, whether or not there is anything deleted or this book is abridged in any way, as far as the actual story?

Mr. Comb: Not as far as the actual story. There may

be some changes made in wording, and that is all, by changing the Italics to straight print, or some question marks, or commas, or periods, that's about all, as I understand it.

The Court: I'd like to hear from——

Mr. Robbins: We are prepared with a subsequent witness, to give you an exact schedule, give the Court an exact [fol. 52] schedule of these very minor changes in the form and content. There is no change, I believe it will be apparent there is no change of any substance, but we have a schedule to show. Most of them are typographical and small corrections in English.

The Court: And as far as these excerpts that have been talked about?

Mr. Kent: And submitted as evidence.

The Court: Were submitted and the Court had reserved decision of the admissibility of them, as far as those excerpts are concerned, is there any change there that you know of?

Mr. Robbins: Not that I know of, I know of no such change. When this schedule is introduced, your Honor, you will see that, for instance, the changes in actual English are so slight, it may be that one of the non-offending words in these alleged excerpts might be involved. I think in one case, in one edition it said a Mass was given, and in another it said a Mass was celebrated. I haven't examined all of the excerpts to know whether that——

The Court: I certainly don't think that language change would influence in the least. I think you can go ahead on your restriction and I am going to admit the book in evidence as it is, of course, subject to the explanations to be later made.

Mr. Comb: That is all.

The Court: Wait, let me ask something. Now, who [fol. 53] passes on what shelf this book goes on, this committee? Who reads it first, is that your duty or how does it come about, how is it brought out? How did it come about to be placed on the restricted shelf?

A. Originally it was reviewed by a branch librarian, a short review was written and her recommendation was that it was closed shelf material, that it should be for restricted use and for adults only. On that basis, with that

background, the committee members examined the book. They have had an opportunity to read a good deal of it.

The Court: Examined the report, I take it from the librarian?

A. Oh yes, that was included in the book, together with the professional reviews, and the sum total of their decision was that it should be added as restricted material.

The Court: So that really, this committee, then, amounts to, at least in some degree, a censorship, is that right?

A. At least we indicate materials we think may be objectionable.

The Court: Now, just to make this record clear again, any one, any adult, providing the book was on the shelf, and not in use, any adult would be permitted to get this book and take it out to read, is that right?

A. Upon his request.

The Court: I mean upon his request. If he went there and selected that book, he would take it home?

[fol. 54] A. No, he wouldn't select it. He'd have to ask for it, it would be withdrawn from shelves which are not accessible to the public.

The Court: Oh, this closed shelf is not a shelf that is accessible to the public?

A. No.

The Court: Would he or would he not have to state the reason for wanting the book? For instance, apparently here we have a reason for wanting the book. We want to find out whether it's objectionable to our Statute or whether it is not. He wouldn't have to state anything like that, just go in and ask for the book?

A. Yes.

The Court: Is there any appeal from this committee's decision? In other words, this librarian marked it restricted and the committee met and felt it should be restricted. Is there any appeal from that decision, as far as the Library is concerned?

A. Of course, there is always possibility for reconsideration for broader evaluation.

The Court: Very well, thank you. Anything else?

Mr. Kent: Yes, I have a few questions I'd like to ask Miss Good.

By Mr. Kent:

Q. Miss Good, how many members are there on your committee?

A. It varies.

[fol. 55] Q. At the time this particular book was passed upon, how many were there?

A. There were four people.

Q. Did all those four people read this book?

A. They presumably read it.

The Court: You don't know, do you?

A. No, they read at it, certainly a good deal.

By Mr. Kent:

Q. You don't know whether or not they read a book review that was submitted to them by some one, do you?

A. That's not the practice, I know that.

Q. I am not asking what the practice is. I am asking whether or not you know as to whether this particular book——

A. No.

Q. At least, you read this book, did you not?

A. Yes, I did.

Q. Is that a full time occupation with you?

A. The selection process is a full time operation.

Q. Yes, you spend all of your working day reading books?

A. Not all of it. No, there are other problems.

Q. I mean, making classifications, and so forth? I mean, generally, that is your full time endeavor?

A. Yes.

The Court: I take it there are more than one in that same position. You don't have to read every book that comes out in the entire City?

A. No.

The Court: There are several employed in the same capacity?

[fol. 56] A. I am Chief of that department.

The Court: You have other help there?

A. Yes.

By Mr. Kent:

Q. Now, if I wrote a book and I wanted to submit it, I say, maybe, if I ever find any time or if I am so inclined, if I wished to submit a novel for placing upon the shelves of the Detroit Public Library, could I just submit it, or is there some process that must be gone through?

A. You must submit it to the Book Selection Department. It would be considered and the value of it, the meaning of it for the collection would determine whether or not we'd accept it for inclusion.

The Court: Both from a literary and a moral standpoint?

A. Yes.

By Mr. Kent:

Q. You felt, did you, that this book was of some literary value, you said that's what restricted means, did you not?

A. Yes.

Q. But you——

Mr. Robbins: I didn't get the witness's answer.

The Court: She said yes.

By Mr. Kent:

Q. But you also felt, Miss Good, that it should not be promoted, is that right?

A. Yes.

Q. Why did you feel it should not be promoted, if it has literary value?

[fol. 57] A. "Because there were certain scenes and incidents in it that were for adult readers only and on that basis, we restricted its use for young people."

Q. In other words, you wouldn't suggest that this is the type of reading that you would want any one under the age of twenty-one years to read, is that right?

A. I wouldn't always say twenty-one.

Q. Well,——

A. A mature adult.

Q. Under twenty-one is concered a minor, and over is considered an adult.

The Court: Except in Courts of law.

By Mr. Kent:

Q. All right, would you say that this is not the type of material that, if you had a child within that age group, you would permit to read?

Mr. Robbins: If your Honor please, I think the relation to the witness's possible child and whatever environmental background——

Mr. Kent: I think Miss Good reads with that in mind. That's why she placed it on the restricted list.

Mr. Robbins: I think—I object to the reference of personalized children.

The Court: Now wait. In the first place, if you want a record in this case, you will have to talk one at a time, because no reporter can put what both of you say at the same time on the transcript.

[fol. 58] Mr. Kent: Mr. Kirk is an exception, your Honor.

The Court: I know he is an exception, but he still isn't that good. So, I want to make this clear, that the objection, I think, is well taken, if you say as to her child.

Mr. Kent: All right. May I rephrase?

The Court: If you ask her the question as to a child?

Mr. Kent: May I rephrase the question?

Mr. Robbins: I should be glad to hear his rephrased question.

By Mr. Kent:

Q. All right. Miss Good, by your placing this book, "The Devil Rides Outside" on the restricted list, did that mean that it was not considered the type of reading that is good for a child or a minor person?

A. Yes, it did.

Mr. Kent: All right, I have no further questions.

The Court: Let me ask you this: Isn't it possible that this book may be objectionable to some person thirty years old instead of a minor?

A. Well, it's up to the adult.

The Court: It's up to the adult. I am asking you, isn't it possible that it may be harmful to somebody thirty years old?

A. I wouldn't say that it was. The emotional, stable mature mind——

[fol. 59] The Court: You are adding something. I am asking you if it isn't possible that this might be wrong for some people over thirty years old?

A. I should hate to say yes or no to that, Judge.

The Court: Very well.

Mr. Robbins: If your Honor please——

The Court: She said she wouldn't say either way.

Mr. Robbins: I appreciate that, but I want to indicate at this time your question, to the extent that it may embody the rule laid down in Regina vs. Hickland, I object. In this particular case, I realize there has been no answer, so it is removed.

The Court: Well, I know this, that sitting here and watching some of this parading through the Courts, that I can think of very many people that would be harmed by that book. That's why I asked the question. However, I will be governed by the law and the testimony as I hear it from the witness stand. Proceed.

[fol. 60] Re-direct examination.

By Mr. Comb:

Q. Miss Good, in addition to the committee passing this book for restricted use, the committee purchasd the book also, because in the opnion of the competent judges, the importance as a social document, honest and intent from treatment——

The Court: You are reading from that slip that's attached to the cover?

Mr. Comb: Yes, your Honor.

The Court: Anything else from this witness?

Mr. Kent: I have no further questions.

The Court: Thank you.

(Witness excused.)

Mr. Robbins: I'd like to call Freeman Lewis, please.

[fol. 61] FREEMAN LEWIS, sworn by the Clerk on behalf of the Defendant, was examined and testified as follows:

Direct examination.

By Mr. Robbins:

Q. Mr. Lewis, will you give the Court your full name and home address?

A. My name is Freeman Lewis. I live in Glennhead, Long Island.

Q. Mr. Lewis, how old are you?

A. I am forty-six.

Q. And you are presently the Executive Vice-President of Pocket Books, Inc.?

A. That is correct.

Q. Located at 630 Fifth Avenue, New York City?

A. That is right.

Q. Is Pocket Books the publisher of this book, which is People's Exhibit 1 in this case?

A. We are.

Q. Now, when was the first time you came across this story "The Devil Rides Outside?"

A. In the fall of 1952, rather, early fall.

Q. Was it a manuscript at that time?

A. It was in Galleys.

Q. Was it the Galleys of some other publisher?

A. The Galleys of Smith Inc.

Q. The publisher of the hard cover, which is now Defense Exhibit 1 in this case which I show you?

[fol. 62] A. They were.

Q. You read it in the galley?

A. I did.

Q. And thereafter, did you enter into some negotiations with the author of the hard cover publisher for the purpose of reprint rights of this work?

A. With the hard cover publisher.

Q. Did there come a time when a formal agreement was executed by your company and the publisher of the hard cover?

A. Yes, November 7, 1952.

Q. When was it published?

A. Late October, 1952.

Q. So it was after the publication of the hard cover that your agreement was signed?

A. That is right.

Q. Before the publication of your edition—withdraw that. When was your edition, the Pocket Book edition which is represented by People's Exhibit 1 in this case, actually put on sale?

A. March, 1954.

Q. And was it thereafter distributed through forty-eight States of this country?

A. It was.

Q. And incidentally, has it been banned in any other State?

Mr. Kent: I object to that.

The Court: Objection sustained. I already said I am not going to try this case by comparison. We have a spe-
[fol. 63] cial Statute, I am going to be governed by that.

By Mr. Robbins:

Q. What was the print order of this edition?

Mr. Kent: I object to that; that's another way of saying the same thing.

The Court: Objection sustained. I am interested in the material in the book, and the cover.

By Mr. Robbins:

Q. Now, the question has come up here, with respect to editorial changes between the hard cover edition as published by Smiths and the edition published by your company, Pocket Book, Inc. Are you familiar with those changes?

A. I am.

Q. Incidentally, there was also, and this is material for explanation, there was another third edition which was published in England?

A. That is right.

Q. That is known as Collins?

A. That is right. Collins is the name of the English publisher.

Q. Can we refer to it as the Collins edition as the English edition?

A. Yes.

Q. The Collins edition was published before your edition?

A. Yes.

Q. But after the original hard cover edition?

A. Yes.

Q. Did you prepare a schedule of the actual changes between the Smith's hard cover edition, which is represented by Defense Exhibit 1, and the reprint edition, which is represented by People's Exhibit 1?

A. If your Honor please, could I explain how this process is done? I think I could make it more clear.

[fol. 64] The Court: I don't think there is any objection.

Mr. Kent: No, I think it might be edifying to all of us.

A. I have in my brief case, if you will bring it out—would you bring me the set of sheets that are there, too? When the arrangement was made for the English edition spoken of as the Collins edition, the author requested that a certain number of changes be made in the English edition. When it came——

Mr. Kent: The author?

A. The author requested this. These changes were, I presume, made. I have not examined the Collins edition, but it is the custom, if you ask. When we came to do it, we asked him if he wished any changes made in our edition. He said he wished to have in our edition some of the changes which were made in the English edition, but not all.

The Court: I don't follow that.

A. Well, we were given a schedule.

The Court: Too good either for us, or too good for the British, or do they have a different slant on things?

A. This was prepared by the author and given to Collins as their guide to the changes he wished made.

The Court: And he only wanted some of those changes made in the United States?

A. He gave us a copy of that in which he checked in red those changes which he made in our edition. This is

the schedule we followed and the changes we made, as requested by the author.

[fol. 65] Mr. Robbins: By way of explanation, I would like to state, for the further technical completion of this proof, the author himself is in Court and he can also testify with respect to these changes on the schedule. But at this point, I would like to continue with this Examination.

By Mr. Robbins:

Q. Mr. Lewis, this actual schedule you have, was that prepared at Pocket Books or by the author?

A. By the author.

Q. Then submitted to the Pocket Books and your Galleys were conformed according with those changes?

A. That is right.

Q. Thereafter in your proof-reading,—in the proof-reading of People's Exhibit 1, when it came from the printer, was conformed to the changes—was monitored with respect to those changes there, is that right?

A. That is right.

Q. Now, all the changes that have appeared through these separate editions will, by necessity, be ascertainable from that schedule?

A. That, plus the original Smiths edition.

Q. So the comparison of the original Smiths edition and that schedule compare?

A. And in the Collins edition.

Q. Will show all of that. The Collins edition is not before this Court. May I see the schedule, please? What are these sheets that you have with it?

[fol. 66] A. Well, that's a set of marked page proofs, showing the changes that are to be made. That's the material from which the compositor works in setting the type.

Mr. Robbins: Well, I should like to mark for identification schedule of editorial corrections for Collins publishers, "The Devil Rides Outside," headed John H. Griffin, of Mansfield, Texas, U. S. A., consisting of some twenty-two pages, be marked as an Exhibit, Defendant's Exhibit 2.

(Whereupon a document was marked Defendant's Exhibit No. 2 by the Reporter.)

Mr. Robbins: And marked as Defendant's Exhibit 3, a batch of 596 page proof pages of the work "The Devil Rides Outside," marked GC-14, March, 1954, with a printed number of P-3227, marked as Defendant's Exhibit No. 3.

(Whereupon a document was marked Defendant's Exhibit No. 3 by the Reporter.)

By Mr. Robbins:

Q. Mr. Lewis, was there any particular way of displaying your edition of this work, or any particular advertising campaign with respect to it?

A. No, we do not do advertising on books. We put them through racks which you've seen in drug stores, cigar stores, that is all.

Mr. Robbins: Now, I'd like to offer these Defendant's Exhibits 2 and 3 as a clarification of the Defendant's Exhibit 1. I'd like to offer these in evidence.

[fol. 67] The Court: You mean, to show any changes between Exhibit 1 of the People and Exhibit 1 of the Defendant, is that correct?

Mr. Robbins: Yes.

Mr. Kent: May I ask Mr. Lewis a few questions on that, your Honor?

The Court: Go ahead.

Cross-examination.

By Mr. Kent:

Q. Did you have anything to do yourself, personally, with these editorial changes?

A. None.

Mr. Robbins: I didn't hear your question.

Mr. Kent: You should.

Mr. Robbins: I am sorry.

Mr. Kent: I asked him if he had anything to do, personally, with making these changes, Mr. Robbins.

By Mr. Kent:

Q. Did you read the book in the hard cover?

A. Well, I read it in the Galleys, that's the type from

which eventually the hard cover is made. I read it before it was published.

Q. Did you read it full and completely, the full and complete book?

A. I did.

[fol. 68] Q. I notice on Defendant's Proposed Exhibit No. 2, which I am now holding in my hand, it shows corrections running from page 4 through page 590. Now, for clarification, the hard cover book, which has already been testified can be found in the Public Library, contains 596 pages. The soft cover edition contains 579, I believe. That is right. Now, in other words, the conclusion would be, would it not, Mr. Freeman——

Mr. Robbins: Mr. Lewis.

By Mr. Kent:

Q. Mr. Freeman Lewis, that there is some substantial change between the hard cover book and the soft?

A. No, sir, that is not true. The length of a book depends on the type size and the spacing.

Q. Well, but, if changes appear on every page in the book——

A. They don't, if you will remember what I said. The only changes made for our edition are the ones checked. That is a list of the changes made for the Collins edition. You will note that there are a great many more not made than made.

Q. Do you know or have any idea why these changes were made?

A. Mostly they are typographical in nature.

Q. In the soft book as from the hard book?

A. The bulk of them are deleting Italics and changing them to Roman, and changing exclamation points to periods.

Q. Except where words are changed?

A. There are so few words.

Q. Are there some words which were changed that minors would be able to understand the language a little more?

[fol. 69] A. I had no knowledge of how it was done, but I would doubt it.

Q. Well, that's your opinion?

A. That's my opinion, I did not have anything to do with it.

Q. You had nothing to do with these changes?

A. That is correct.

Q. Did you know, were you at all acquainted with the fact, Mr. Lewis, that this particular book in the Smiths hard cover edition, was placed on the restrictive use list of the Detroit Public Library?

A. I did not know that until this case began.

Q. When did you find that out?

A. When I was told so by Mr. Comb.

Q. Did you know that the Library had looked at it at all?

A. I did not.

Q. That it was unacceptable?

A. I believe I had a letter from Smiths, but this is also roughly at the time the trial began, or the case began, telling me that it had been purchased by a large number of public libraries, including Detroit. I don't remember precisely.

Q. You have learned since that, it is on restrictive use list?

A. I would expect it to be in most public libraries throughout the country.

Q. What was that again?

A. I would expect it to be in most public libraries.

The Court: You mean on a restricted list?

A. Not on a restricted list, no. I would be surprised.

[fol. 70] Mr. Kent: Your main business is putting out these blood and thunder soft cover books?

A. I object, sir, to your adjectives.

The Court: I think it is objectionable. I am not going to compare this book with any other book. I will take the opinions from the experts, that is a result of their training and a result of their work. But to compare it with one book or to refer to anything else in any other form, I am going to——

By Mr. Kent:

Q. Mr. Lewis, how is this book "The Devil Rides Outside" sold and distributed?

A. Primarily through a group of wholesalers who are known as independent wholesalers. We have in the United States and Canada, some eight hundred of them.

Q. Here in Detroit?

A. The Ludington News Company is our distributor.

Q. Do you know of your own personal knowledge, where these pocket-size editions of books go, where they are placed for sale?

A. I think you will have to be a little clearer.

Q. Where are they sold mostly, from your experience?

A. I would say that approximately fifty per cent of our outlets are drugstores.

Q. What is your other fifty per cent?

A. The rest would be made up of Five and Ten Cent Stores, book stores, department stores, cigar stores, newsstands.

Q. Now, in the drugstores, they are displayed, are they not?

[fol. 71] A. They are.

Q. You have no other advertising media concerning the sale and distribution of these books, except those done by the book itself?

A. Except for the fact that we do mail out to a selected list once a year a catalogue of our publications, which is also available to any one writing in for it.

Q. If a book such as this is permitted to go through your usual channel and sale of distribution, it would ultimately appear in the drugstores and in the dime stores, and department stores, of the City of Detroit and State of Michigan, is that right?

A. That is correct.

Q. And do you know how—well, it's a fact, is it not, that these drugstores and other places which we've mentioned sell school supplies?

A. Some of them.

Q. And some of these stores are located near schools?

A. That is true.

Q. And these books are prominently displayed? And that any youth or any minor can merely walk into the store, if the book is displayed there?

Mr. Robbins: Now, I object to this question, about what any youth——

The Court: You can use that in argument. I sustain the objection. In other words, it's in places where schools are right near it and it's displayed prominently?

Mr. Kent: That is right.

The Court: The Court has a right to draw a reasonable [fol. 72] inference from that fact.

Mr. Kent: I have no other questions.

The Court: Let me ask a question. You say you have no way of advertising. Now, these covers you place on the books, don't you place them with the idea in mind that if you can make it look good, somebody will probably buy the book?

A. Yes sir. I interpreted counsel's use of the word advertising as being paid advertising as in the magazines or on the radio.

Mr. Robbins: Are you finished, your Honor.

The Court: Go ahead.

Re-direct examination.

By Mr. Robbins:

Q. Mr. Lewis, it's obviously the intent of Pocket Books, Inc. to make their cover of the book as attractive a cover, is that right?

A. That is correct.

Q. In other words, something which might interest the whole readership of the community which they are selling, be interested in the book?

A. We attempt to make the cover be as honest a representation as we can of the contents inside the book, and to have a copy when the space is available, also carry out that theme and to have it an attractive package for eye-appeal as we do within the bounds of good taste.

Q. This is the practice of hard cover publishers?

Mr. Kent: We are not concerned with that, your Honor.
[fol. 73] Mr. Robbins: Paper jackets.
The Court: Objections are sustained. You are speaking for your company when you say you try to keep the pictures reasonably to conform to the story within?

A. I am, sir.
The Court: I hope so, go right ahead.

By Mr. Robbins:

Q. Mr. Kent wrote you with respect—questioned you, rather, with respect to the circulation of the hard cover edition amongst other libraries, is that right, and you referred to a letter that you received as to when you first knew when it was in the public library here?
A. Yes.
Q. Is this the letter you received from Smiths, Inc. containing that?
A. It is.

Mr. Robbins: I'd like to have marked in evidence, marked as an Exhibit——
Mr. Kent: I will have to object to the Exhibit, may it please the Court,—again trying to draw standards of comparison.
The Court: Wait, has it been marked?
Mr. Robbins: Hasn't even been marked.
The Court: Better mark it, so the record will show what we are talking about.
Mr. Robbins: I should like to have a letter marked from Smiths, Inc. date—to Mr. Freeman Lewis, signed Gordon W. Smith, as Defense Exhibit 4 in this case. I am so used to it myself——

[fol. 74] (Whereupon a document was marked Defendant's Exhibit No. 4 by the Reporter.)

The Court: That places me—what is the objection?
Mr. Kent: The objection, may it please the Court, to Exhibit No. 4, is that it attempts to draw comparison of standards.
Mr. Robbins: Your Honor——
The Court: Is Mr. Smith here?

Mr. Robbins: No, Mr. Smith is not here.

The Court: Wouldn't this be hearsay?

Mr. Kent: That is right. And I will agree that it may have been received by this man, but was written by "Cordially yours, Gordon W. Smith, of Smiths, Inc."

Mr. Robbins: Your Honor please, the only reason I offered this, the door was opened here by my friend here on direct examination, as to when and how he first heard that it was in the public Library here, and he said that the only way you knew, and he said he also has a letter dated June 12th, also the question as to whether it was in other libraries, and this is the answer. If this door hadn't been opened by my friend, I wouldn't be offering the Exhibit.

The Court: The Court is closing it right now. All I intend to find out is the fact that how he found out about it, and he told us. Any opinion of Mr. Smith's will be accepted by the Court if Mr. Smith is here.

[fol. 75] Mr. Robbins: This is not an opinion.

The Court: Whatever it is, it would express a statement that might be better left out of the evidence. So I am excluding that with the understanding if you want to bring in Mr. Smith, we will listen to him, so he can be cross-examined.

Mr. Robbins: I have no further questions, your Honor.

Mr. Kent: Nor have I.

The Court: Wait.

A. I am sorry.

The Court: I am sorry. With reference to these changes in the book, have they been offered in evidence now?

Mr. Robbins: They were offered.

The Court: No, they were not.

Mr. Robbins: I beg pardon, marked as an Exhibit. This is my fault. I would now like to offer these in evidence, 2 and 3.

Mr. Kent: Well, may it please the Court, I will have to object for the reason that Mr. Lewis did not make these corrections, that there are corrections here that do not appear solely in People's Exhibit No. 1, that some one else has made the corrections. It may be all right to offer them, if you do intend to call Mr. Griffin, who I understand has

been responsible for making the deletions and corrections.
[fol. 76] Mr. Robbins: I do intend to.

Mr. Kent: He might be able to testfy for the Court's advice as to what changes appear within the hard cover and the Pocket Book edition.

The Court: Very well, with that understanding, I am going to admit them in evidence, and I will also say the Court would like to have possession of that, so we won't use too much of the Court's time during the Court sessions. Maybe, I can read that afterwards and help me determine. As to these others, I take it that's given, am I right, Witness, that's given to the person who produces this book, so that when he prepares the pages, he makes the changes that are on there?

A. The typesetter uses that as the copy from which he sets.

Mr. Kent: That's Exhibit 3. That would be of no evidentuary value.

The Court: Maybe it will.

A. The markings from the paper sheet are transferred onto the book so that when he is setting the type he reads down and makes the changes as he goes.

The Court: These pages are pages from the hard cover?

A. That is correct.

Mr. Robbins: Which hard cover?

A. I believe it's the Smiths hard cover edition. I'd have to look to be sure.

Mr. Robbins: Page 596.

A. Look at the title page.

[fol. 77] Mr. Robbins: I am not going to waste the Court's time. I am going to let the witness look.

Mr. Kent: To waste the witness's time. The Court has to wait while the witness looks.

A. It's been torn out.

Mr. Kent: I repeat, may it please the Court, that the Exhibit would have no evidentuary value insofar as we know that the book was published in hard cover and then

subsequently following that, it was published in the Pocket Book edition. We are concerned here with whether or not that completed Pocket Book edition was sold, and there is no dispute as to that. Subsequently, I think all Mr. Freeman ought to be able to testify to, is whether or not all the pocketbooks that we have in our possession are the same.

The Court: Then your objection is over-ruled. In the first place, I might be very enlightened by the changes, maybe just grammatical and maybe not. I want to know if the thing was purified for public consumption or if it was contaminated to see. Now, let's be frank about it. That's what I am interested in.

Mr. Kent: Well, all right, then. I am sure——

A. Do I answer?

The Court: I am going to admit, without any answer, I am going to admit both in evidence.

Mr. Robbins: I want to give these to the Court's custody. [fol. 78] The Court: You know this is the Smith's edition?

A. That is the Smith's edition.

The Court: Very well.

Mr. Robbins: I have no further questions, your Honor.

The Court: Anything further? Thank you.

(Witness excused.)

Professor Sculley Bradley, a witness affirmed by the Clerk on behalf of the Defendant, was examined and testified as follows:

Direct examination.

By Mr. Robbins:

Q. Professor Sculley Bradley, you told the Reporter you were connected with the University of Pennsylvania, is that right?

A. Yes, sir.

Q. What is your present position in the University of Pennsylvania?

A. I am Professor of English, and Chairman of the Department of American Civilization.

Q. How many years have you been connected with the Department at the University?

A. Since 1919. Thirty-five, or is it thirty-four.

Q. The University is in Philadelphia, Pennsylvania, is that right?

A. Yes, sir, it is.

Q. And you were born in Philadelphia, sir?

[fol. 79] A. I was born in Philadelphia.

Q. Raised in the schools of Philadelphia?

A. Public schools in Philadelphia.

Q. And then where did you go to attend college?

A. University of Pennsylvania, as an under-graduate work.

Q. Do any graduate work after your college degree was concluded?

A. Yes, I took two degrees, from the Graduate School, the M.A. and the Ph.D.

Q. Of the same University?

A. Of the same University, yes sir.

Q. Thereafter finishing these two degrees, incidentally, while you were studying in the Graduate School, were you also employed as a teacher at the University?

A. I was.

Q. Have you taught any other university?

A. As a visiting professor, from time to time.

Q. What other universities have you taught?

A. Northwestern and Duke University, University of Southern California, Bradlow School of English, in Vermont.

Q. And what courses at the University of Pennsylvania have you taught, what has been the field? Any particular type of courses?

A. Yes, I am a specialist in American Literature, American Civilization. I have taught general courses in English Literature years ago, but my principle field is graduate study in American Literature and Civilization.

Q. And at the courses that you gave at the Universities [fol. 80] as a guest lecturer, any particular type of course?

A. Yes, pretty much the same thing as I teach at the

University of Pennsylvania. On individual American authors and the literary history of the United States.

Q. Have you also done some writing?

A. Yes sir.

Q. What type of books have you written?

A. Primarily professional books by which I mean history and criticism and biography. I've written two biographies and a number of historical and criticism books.

Q. When you spoke as to critical books, give us the efforts you have.

A. I have very often written criticisms for newspapers and magazines, I mean at a popular journalism and more restrictedly, specialized criticisms of works for the professional journals. I was Assistant Literary Editor of the Philadelphia Press in 1931 to '33, while continuing to be——

The Court: Is that a newspaper?

A. Yes sir, it is no longer published, I regret to say. I had nothing to do with that.

The Court: I just wondered, because I hadn't heard of it before.

A. It was a very old one, your Honor.

By Mr. Robbins:

Q. Were you finished with your critical works?

A. I wrote a life of—a historian.

The Court: Wait, on your critical work, sir, that was criticizing or commenting at least, on various books, is that it?

[fol. 81] A. Yes sir.

The Court: That have been read by you?

A. Yes sir, your Honor. My work as Assistant Literary Editor of the newspaper in those three years was, of course, primarily to secure articles and criticisms from others, to whom I sent books, although I frequently wrote these criticisms myself for the newspaper.

As I say, in addition to that, I continued through the years to review books for newspapers and popular magazines.

By Mr. Robbins:

Q. Can you give us some of the newspapers and magazines you've reviewed for?

A. Yes, The Chicago Tribune, The New York Times, the Book Supplement, The Saturday Review of Literature, Harper's, and such professional journals as the publications of Modern Language Association and a magazine entitled American Literature. Many others, I don't want to be tedious.

Q. You are not tedious. Now, did you read the particular book——

The Court: Before we get to that, sir, I just want one or two more things. Now, you talked about these papers in which your criticism appeared. Now, can you give us any enlightenment on what books or articles or publications were the subject of your criticism or your——

A. Does your Honor refer to the '30s, and the Philadelphia Record?

The Court: I refer to that plus the Tribune, Times, the Review, and so forth. In other words, what particular books have you criticized or——

[fol. 82] A. Well, I have criticized lives—biographies as they were published of Emerson, and of Whitman, and of Edgar Allen Poe—critical biographies in my field; very frequently in years gone by, popular novels which were current at the time, and volumes of poetry.

The Court: Can you name some, not biographies, sir?

A. Your Honor, 1931-1932 seems a long while back. I can be sure that I did write a review of "Appointment in Sumara" by John O'Hara. I can be sure I wrote a review of one of the novels of James T. Farrell. I wouldn't swear which one it was. I can remember reviewing a volume of short stories by Steinbeck, but, as I say, twenty years has elapsed since that time of popular reviewing.

The Court: Have you ever reviewed a book that was ever questioned in any Court later, as to any objectionable features such as we are discussing?

A. It seems to me that one of the novels of James T. Farrell, probably "Father and Son," which I reviewed, may later at some time or another, but the details escape my memory, have been called into question in some society.

I can't recall, your Honor, any other book which that might be true.

The Court: Very well.

By Mr. Robbins:

Q. Professor Bradley, did there come a time when you read the work "The Devil Rides Outside" which is represented as People's Exhibit 1?

[fol. 83] A. Yes.

Q. Incidentally, is this the edition you read it in?

A. I suppose you have the copy there, this is the same copy.

Q. The same edition as represented by People's Exhibit 1?

A. Yes sir.

Q. When was it that you read it?

A. Some time in June, Mr. Robbins, early, I think.

Q. In June of this year?

A. Yes sir.

Q. And after reading it, did you read any other material in connection with it?

A. There are certain reviews printed with the volume.

Q. I see, that was all?

A. Beyond that, no sir.

Q. And after reading it, did you study it and carefully analyze the work?

A. I did.

Q. Did you analyze it and study it with respect to its literary value and merit?

A. I did.

Q. Did you form an opinion as to its literary value and merit?

A. I did.

Mr. Kent: Just a moment. May it please the Court, I believe all this has been gone over before, but just for the purpose of the record, I'd like at this time to renew my objection, so that it will be continuing.

[fol. 84] The Court: Without objecting any further, my ruling would be the same on both issues. It would be of help to the Court on the literary issue, and it will be of help to the Court on the interpretation of the Statute. I

am going to permit people who claim to know what it's all about, to testify in this case. That will apply to both sides. So your objection need not be renewed afterwards by people who have something to do with the morals of the public.

Mr. Robbins: Thank you, your Honor.

By Mr. Robbins:

Q. Now, will you tell the Court here what is your opinion as to the literary value and merit of this particular work?

A. I think this is a serious work of literature, that a highly ethical intention, and that it has succeeded in its intention to convey moral earnestness in respect to a religious experience which occurred to the original character, I think of him as Mr. "X", because he is not named in the book. I don't know whether that satisfies the extent of your question or not.

Q. No. Now, will you tell us, first of all, the themes of this work, the scenes it's laid in, the themes, and delineate as far as you can, exactly what the cross-currents of the workings, the themes are, and the ideas that are conveyed?

A. It might take some time, if the Court allows it.

The Court: We want to arrive at a proper conclusion, so if you have the time and you are here as a witness.

A. Thank you, your Honor. I should begin by pointing —by drawing attention to the two epigraphs, one opening the first half, and the other the second half of this novel. [fol. 85] I observed that each of them is drawn from a person of acknowledge- piety and acknowledged literary connection with Christian thought, and they tend to substantiate each other, and in my judgment give us a clue as to what the author's intention was. The first is from Jerry Manley Hopkins, a Catholic poet, highly esteemed.

The Court: Wait, he is not here. You are asked, if I understand it, to base your findings on the reading of the book itself.

Mr. Robbins: This is in the book.

The Court: What?

Mr. Robbins: This is in the book and he is discussing this.

The Court: His opinion of the book is of the story, of

the way it is written, and not to transmit what somebody else said. Because that is an Exhibit. I can read that as well as he can. I don't want from this witness what anybody else thinks. I want what he thinks and how he arrived at——

Mr. Robbins: I am at a loss, your Honor. What he is referring to is not a criticism of this book, but a proverb in the book, a part of the book, the poetry of the book which explains the purposes of what this author is writing about. So he is delineating the themes and the terms. Not intended——

The Court: Is that what you mean?

A. Yes.

The Court: Go ahead, I am wrong.

[fol. 86] A. I think the fogginess was in my statement, your Honor.

The Court: Don't start to apologize, I make a lot of mistakes. Go ahead and read.

Q. What I have in mind is to establish a motivation for this book which I think is highly ethical and serious, and the author has, therefore, quoted at the beginning of each of the halves of his book a literary quotation which substantiates that view. These are both discussions, very brief ones, of the nature of evil, or the nature of sin, and, particularly, in the psychological area of man's apprehension of these factors of sin and evil. Gerald Manley Hopkins' passage emphasizes the bewilderment of a Christian man, that sin should be inherent in our lives and if our personalities, inate, original, a depravity that he discovers in himself. St. Augustine who——

The Court: Supposing you just read what is in there.

A. May I?

The Court: From——

A. Gerald Manley Hopkins is quoted:

> "I am gall, I am heartburn. God's most deep decree
> Bitter would have me taste: my taste was me;
> Bones built in me, flesh filled, blood brimmed the curse.
> Selfyeast of spirit a dull dough sours. I see

> The lost are like this, and their scourge to be
> As I am mine, their sweating selves; but worst."

and the passage from St. Augustine——

[fol. 87] The Court: On page what?

A. Precedes pages 227, your Honor. St. Augustine is considering again the nature of man's control of sin or temptation.

> "Whence is this monstrousness? and to what end? The mind commands the body, and it obeys instantly; the mind commands itself, and is resisted. The mind commands the hand to be moved; and such readiness is there, that command is scarce distinct from obedience. Yet the mind is mind, the hand is body. The mind commands the mind, its own self, to will and yet it doth not. Whence this monstrousness? and to what end?"

I think here you get a clue to the motivation of the book. The author has been aware, I think, of two levels of conscience, and I'm not qualified to go into theological backgrounds of their history, but we are aware in our literary evaluation of these things that these things exist. One is the consciousness that man has of an instinctual behavior and the other is the consciousness he has of a rational approval or disapproval of his behavior. Theologically, I believe it has been very often expressed, the view has very often been expressed that the instinctual behavior will instinctively occur, and that our rational approval or disapproval of that behavior is the point at which our moral responsibility is active. I believe, I can't speak for an artist who has written a book as to what all of his intentions might be, but as I read the book, it seems to appear to me that he's had these two courses in mind and he's, [fol. 88] therefore, taken life as he has known it, because of the reality of these scenes impresses itself upon one who has been in France and known something of the country there. He's taken that life and arranged the facts of that life in such a way as to develop the experience of our unnamed protagonist, chief actor in the book as he moves from—to greater and greater spiritual and conscientious

responsibility. He is shown in the beginning of the book as a young man of violent passion, not, I should suppose, as a teacher of young men, very unusual, but nevertheless, a young man who has not learned self-discipline. He has led a very wordly life, he has a completely relativist attitude toward his behavior. If it succeeds, he is satisfied with it, without questioning its moral value. He has been a musicologist and is a scholar. He is not a person of, shall we say, less privileged or opportunity in life, a person of somewhat rich spiritual potentialities, but he has not much discipline. In the course of his studies, he has been permitted to enter a monastery as a layman and as a non-Catholic, in order to study the large library of Gregorian Chant which has been accumulated in this Benedictine monastery, which again has reference to the Benedictine libraries of France, which are very rich in this matter. This, of course, makes it necessary for him to submit himself to Benedictine discipline which he does cheerfully enough in the beginning. It also brings him very closely into contact with Father G'seau, who is the scholar and musicologist of this library, and with Father Clément, a very Godly man, it seems to me, who has had many of the experiences which this young man confronts [fol. 89] and has learned a kind of unity in his spiritual life and spiritual discipline, which certainly, very obviously, the young man needs.

Apparently a crisis occurs at which the young man becomes aware of his growing responsibility, and is resentful of it. It requires a change in one's life, if he accedes to it. Nevertheless, he attempts to test its validity by living outside the monastery, where there are more temptations of the sort that have bothered him most, and he meets them with very little success in the beginning, but, with increasing, mounting success, until a final climax in which a temptation of extraordinary violence permits him in one large gesture of discipline and denial to illustrate to himself that he is gaining a self-mastery*te*. I may say, should add, indeed I am obliged to say in terms of what I have already said, that most of these temptations are symbolized by actual temptations of the flesh.

We realize, as we criticize literature and attempt to

apply judgments of value to it, that there are many forms of material temptation, that, however, the fleshly temptation of sexuality seems to be more available and I hesitate to say this, but perhaps more widely understood and more widely experienced than many other temptations, and that it has been, therefore, the practice of literature to avail itself of symbols of experience in this area. I may say also, that there is a long tradition back into the Middle Ages of Christian experience, in which a similar life has been recorded for us. The temptations of St. Augustine, from whom we just saw a passage, is one such life. St. Theresa and the legends of St. Theresa, temptations of [fol. 90] that kind, and, of course, St. Anthony, in his life experience toward the gaining of mastery, was so extraordinarily fruitful of experience of this kind, that he passed into the Renaissance painting, particularly the Italian school and there are many paintings of the temptations of St. Anthony and they are observable to those that have looked at them, that they are temptations of the flesh, so the symbol of flesh and sexuality is not invented for this book. That is the point I think I should make. Does that, sir, cover the ground you had in mind?

The Court: Go ahead, I will ask my question at the end.

By Mr. Robbins:

Q. Well, now, have you finished giving the ultimate denouement of this plot? Doctor Bradley, you are familiar of course, with your study of the book, with the characters, there is a character there, Dr. Castelar.

A. Yes.

Q. Will you explain particularly the literary value of this particular character and its correlation with the themes and purposes of the book?

A. I think he is very important in this book, although, might, of course, be puzzling. He is a Latin-American physician, a layman devoted to the Catholic church. He has some medical specialties which have caused him to be of service to the Benedictine, so he occasionally goes to France and is well acquainted monasticism and deeply impressed by it, although not able himself to discipline his own life. He is well married, but he, I remember at

[fol. 91] one point, speaks of himself as a bullish, meaning that the animal instincts are terrifically over-developed. At the same time, it is obvious to the hero of this book, and to one reading the book, that Castelar enjoyed the grace of God. This, I think, is one of the principal motivations that the author has attempted to establish. It has been explicitly developed by several conversations between Father Clément and the character in which the nature of sin over-gains the availability of grace as Christians knew it, is clarified over and over again. This goes back to what I said in the beginning, Mr. Counsel, of the rational on the one hand and the instinctual on the other. It's an abstruse business in which Castelar stands as the symbol of the person who sins often, who cannot control his sins, but in his mind and in his faith is aware of the grace of God, and that answers your question.

Q. Is there any particular type of writing that this book is part of a school of any particular type or nature of writing?

A. In general, although it's also a little difficult to classify a work of art, because it has its own life, but, in general, you would have to say, I think, that this belongs to "a modern form of writing in which a symbol has been employed, a symbol of action or character has been employed to suggest to the reader more metaphysical and difficult ideas that are associated with it, instead of using an expository method to relate the ideas in philosophical discourse." They have been involved in a symbol of action. Symbolism is represented in many modern works. I don't know whether you intended me to answer that or [fol. 92] not.

Q. This book, as you have indicated, is somewhat a story of conflicts, conflicts in a man, is that correct?

A. Yes, sir.

Q. Is the conflict in the story ultimately resolved, does this bring together all the themes in this book?

A. I think in a very interesting way.

Q. Please describe that.

A. That is why I think this is a book of quite homogenous interest. I discover motivations which have been developed into the first half are brought to fruition in the second

half, and there is a wholeness about the book that as a critic I have very much approved. Counsel asked about the development of a resolution of the forces in one. This, I am afraid, is tedious also. But you begin with the scene in which Mr. "X" arrives at the Benedictine Monastery accompanied by the taxicab driver, whose profession is not necessarily relevant, but he is a man of gross and essential character; although he is coarser than the protagonist, he nevertheless is not too different from the protagonist in his view toward life and responsibility. The conversation between them reveals then the condition of the protagonist. We move on to a period in which the protagonist is deeply engaged in his studies and getting used to the life in the monastery and no particular restlessness besets him. But, from time to time the figure of Salazar comes in and he keeps reminding him, I am sorry, [fol. 93] I mean Salesky, the taxicab driver, that keeps reminding him of his earlier earthy sort of life, so that in time he seeks an adventure outside the monastery walls. I am remembering now that he has had some time in the Benedictine discipline, although not a Catholic by faith but by willingly putting himself into this situation.

He then, on St. Hillaires' Day, as we would say, he goes into the village and, I think, is definitely seeking an adventure. He has abandoned, or at least has left, when he came into this situation, a girl with whom he had lived in Paris as a student at the University for a considerable number of years, he feels the loss of such companionship and is at first tempted by a kind of gross situation which he turns away from him, but then, in the coffee shop, becomes acquainted with a woman of his own class and sort with whom he straightaway has an affair. What is significant about this, is that directly after the episode, he experiences a new attitude towards such adventure, a remorse and a very deep remorse which he can't understand, and which, of course, the intelligent reader, I think would connect with the new spiritual experiences that he had and the kind of devotion and faith that he observed in Father Clément and in Father G'seau.

This continuity is observed in his relationship with Father Clément, when he went to the village on thi sfeast

day, he's asked if he can bring them anything and Father Clément had told him that the Fathers would like to have [fol. 94] some dried fruits as a treat, that would be allowed, and Mr. "X", having gotten tangled up in this amorous adventure, completely forgot the dried fruits. This is a small episode, but he realizes that he is tortured for the first time, that his own selfishness has deprived his friends of a small treat or pleasure which he could have given for them. This is a new experience for him.

This is the kind of continuity.

Mr. Robbins: If your Honor please, I realize the hour is late and I am not finished with this witness. I know your Honor wishes to suspend Court at 1 o'clock. I should be glad to suspend at this time and continue with the witness thereafter.

The Court: I might say the Court's in session from 9 to 1 and with the amount of material that I've been handed, I don't think that will—those will be my hours—but at least as far as taking testimony, we will adjourn this case until tomorrow morning at 9 o'clock.

The Court is adjourned.

(Court adjourned until to-morrow, July 8, 1954.)

[fol. 95] July 8, 1954.

The Court: Are you ready to proceed, Gentlemen?

Mr. Robbins: Yes, your Honor. I will recall Professor Bradley.

Professor Sculley Bradley, having been previously duly sworn, was recalled, examined and testified further as follows:

Direct examination (Continued).

By Mr. Robbins:

Q. Professor Bradley, at the conclusion of yesterday's testimony you were answering a question, I believe, and rather fully, about how the protagonist conflicts in this work became resolved and you were enumerating the ideas and the scenes depicting this resolution and, I believe, and

you may correct me, that you had come to the point where you had described his remorse after the affair with Madame Vincent and his failure to bring back the dried fruits to the monastery?

A. Yes, I will be glad to go on from that point, if you wish.

Q. Yes.

A. I will take the point of origin, however, somewhat before that, so that what I have to say is reasonable, that the discussion related to the intention of the novel, which I take from a literary point of view is very important. [fol. 96] First, to present a situation in which the individual is shown, as I think most individuals in life are, swayed by two forces in his spirit: One, a response to instinctual inclinations which are naturalistic and which we share with all animals, no doubt; and the other, the response to a moral will or a rational conscience, which philosophers in general have distinguished as that element of man which makes him different from other animals and in which his communication with the spiritual intelligence of the universe, which religious people call God, can occur. And, to show the conflict of an individual through a period of his life, in which these two forces have to be revolved in the conflict which you referred and I had said that Mr. "X" was not even aware in any large way of the rational element in his soul when he came to live at the monastery, and only slowly, through the example of devoted men of religion, who had nevertheless—were men of experience, had discovered an activity in his own rational control of his conduct which after the first episode of fleshly experience in the novel, caused him to feel a remorse that surprised him. It was a new experience.

One can now, for the parts of the book I haven't spoken of, I don't want to be unduly tedious, but one can trace this method of analysis through the entire work, to the very end with an increasing tempo which seems necessary. One thinks of the old saints fighting the devil. It seems to be a universal experience working up to a crescendo of temptation and resistance, until at least I felt as a reader, at the [fol. 97] end of the book, that this man had learned what is perhaps the largest character experience where each individual, the reliance upon his rational, moral inclination,

to curb the instinctual and maltendencies which we inherit, and, secondly, the knowledge of the difference between acts and sin. In other words, from a religious point of view, he's learned what is a state of grace. It's impossible, I think, to consider this point without using the language of religion and there I am obviously not a competent witness because I am not professionally a person of religion. But teaching of literature gets to be like that sometimes. But the grace as a concept, which is extended by Divinity to all of us, and not related to the acts that we do, but to the goodness of God. This is a very hard concept for people to understand. Whether you approach it from the literary point of view or whether you approach it through your relationships with spiritual guides in our churches, or whether you discover it independently for yourself, it seems to be one of the great crises of literature.

Those of us who make ourselves expert in literary studies discover that laymen with no particular religious inclination very—still discovered this in their literary writing as a crises and reality and experience which is beyond all others. That is again the recognition, or what Evangelist religions will call salvation or what austere philosophies, the philosophical churches, it becomes a philosophical grace. Doctor Castelar is your important character there. He represents, in my mind, what the author had in mind. He is a very worldly man. He cannot curb her appetites [fol. 98] to his own satisfaction. He always could have a sense of extraordinary sin and yet he knows that he's in the grace of God, and that is why it seems to me, that he is a key character, although, frankly, I am sorry the author didn't let us have him longer. I thought he should have gone on through the book, but that's a different matter.

He does represent that conflict and that constant resolution. That is why to me, Mr. Robbins, this book is a very religious book. I would say the individual episodes relate to that framework and then to the actualities of the countryside, to which every author must also consider. That is to say, it is France. And there are certain aspects of French social life which are not present, or certainly not in the same balance of things in American social life. There are certain franknesses of speech which we hear and recognize in France, we're surprised that French friends

tell us that they recognize some aspects of our conduct and behavior as having a vulgarity which we don't feel. Consequently, there are here and there episodes related to the French backgrounds which we, as American readers, have to adjust ourselves to those terms. Very briefly, the episodes which follow take our young man back to the monastery, where you will discover a succession of discussions with Father Clément, who, as I said before, is his mentor. He resists Clément because it is our nature to resist salvation, somehow, and Clément seems to has discovered that way. It means a good bit of self-abnegation for this young man. Nevertheless, he is fascinated by the [fol. 99] the *cal*rity and the faith of Clement's discussion. He's also puzzled by the fact that Clement tells him that he's focusing on one sin, whereas sin is a state of mind and not this or that individual act.

That, on the other hand, he is not at all aware of the availability of grace, and he makes him try to see the difference between—make him see that there are available to the layman in religious experience exactly the same comforts and discipline and immortality that the person who devotes himself completely to a religious life, or to its exercises, will have, *A*nd the youth comes to understand that only through very rough experience. These experiences involve one, an episode with Christianne who is a quite naturalistic young girl who has very few inhibitions, if any, and who represents characters we all meet in life, I am sure. It represents the meeting with Mademoiselle Desermiere who comes from Paris to visit Madame Renee, and it involves a constant continual relationship with Madame Renee. The first two episodes that I mentioned are what I would call casual, that is, they have no continuous relationship to the book but have an immediate relationship at the point they are introduced. The long relationship with Madame Renee is extremely complex. She represents the terrifying and overwhelming temptation, she has a good bit of connection with psychological concepts, for example, this young man is without mother, he is without domestic attachments, he has left his home, he's gone to live in France. He's been a student there for quite a long time. She is an older woman, she has sons [fol. 100] who are away. One died in the war, the other

has given himself in devotion to a monastic life. These are elements which make her personality accessible to his sympathy. When he decides to test himself in a worldly situation, rather than living in the monastery, to live outside the monastery walls, and to simply go there for his bibliographical study, he takes the cottage of which she is more or less the caretaker because she is adjacent to it in her own home. It is arranged that he shall eat his meals with her, those that he has outside the monastery, and a relationship which is at first that of almost a domestic substitute is present, in their relations. She, however, happens to be, and for the purposes of the novel, is intended to be a person of great desire for power over other people. She's getting older, the town is small, it's a town and community that is dominated by its women which perhaps may not be too unusual, and then above all of these is Madame Renee, who is a social mentor, who can make or break your reputation or your social life in that small, tight French community.

Some of us know how very tight here, how much very more complex in their socialization, than anything we know in either Pennsylvania or Michigan, so that's the situation, and she begins to build herself up by exercising power over him. She's exercised power over others, that's the reason, I think, to me as a reader, that's the reason of the episode of the little child who died, The Chevissier child, earlier in the book. Mr. "X" has been called in, he was passing when this child was in the crisis of illness. They had [fol. 101] wrongly supposed he was a physician. Since the physician did not respond to the call, he did the best he could to save her. She dies in convulsions. That is an episode that might have stopped right there, but for Madame Renee. The result of conventions of that village and the faith of the church, its quietness for their peace of mind, and religiously for her immortal soul, if she buried in consecrated ground, but she has not been baptized, and there is the provision that within a certain number of hours, any one may administer this rite in such an emergency, and then the report that Madame Renee has exercised this function and Mr. "X" 's knowledge that she could not have done it. He knows the time he left, it would already be too late to meet that requirement. Madame

Renee is in a position to exercise power over the Chevissier family, which she does, and at the same time to patronize him, she puts him first in an uncomfortable position by spreading, allowing stories that he had been careless about this child and more or less permitted her death, and that seeps through the village, and that puts her in a position to counteract those stories later on, together with the village priest who makes him understand what is going on. So she puts herself in a position of power over him as often as she could and many other episodes I won't dwell on. This seemed crucial. In time, however, he begins to realize that she has an emotional attachment for him that may not be entirely healthy, and he now turns to Father Clément, whom he has come to respect, is told by Father Clément it seems to the father that he has an emotional responsibility to her, that simply to leave a situa-[fol. 102] tion, a crisis, is not the way to resolve it, and that he should attempt to live with the situation and to resolve it in a spiritual fashion if he can. So that is the background for the final episode of this young man's testing. Madame Renee is more and more uninhibited in her approach toward him, he is more and more tempted until at least and, of course, this occupies a good part of the novel, he has built up the courage in what has been presented at the end of the book, a final assertion of moral will. To break this temptation which was the greatest of them all, in which his sense of Madame Renee's substitution for his mother and at the same time for a younger woman, is brought together in one crisis. It is a bit like the final temptation of St. Anthony in its enormous emotional build-up and power. So that I *s*ould think of it, Mr. Robbins, as "a highly ethical novel in a novel with religious implications at every point, and finally, a novel in which these various scenes are highly integrated." I think of a novel as being a single work of art. I think of it as I think of a statute or a painting. I differentiate in my mind between those writings which are works of art and those for our amusement.

I have no objection to being amused. Mystery stories and writers of fiction are all right, but we are not subject to the same concentration, the same concept of the work of art that his serious novel has, and so, I say this is a serious

work of fiction, because it is built as a whole. Because it [fol. 103] is "not possible for me to take it apart and look at it, look at its individual parts and criticize them without relationship to a whole intention and a whole pattern which they construct. That, then, is the reason why I say serious work of art. The level to which this work of art may rise, depends upon the virtue of the power, the strength, creative genius of the author, but the category of the work is established. We may find that a Thomas Hardy or a Tolstoy may built higher, but the intention will be the same."

Secondly, I would say that it belongs to a category of art that is symbolic, that is to say, an object or an incident is taken to suggest and to evoke within the imagination of the reader, a large area of experience so that the incident or the character or the event is not presented for its own sake alone, but for its evocative power, its power to call from our experience, things which you would not otherwise concentrate and accumulate. That's the nature of the symbol and these events such as I have mentioned, are in each case, that kind of behavioristic symbolism and intended to accumulate and concentrate our experience so that we will understand the drive and the intention of the novel throughout.

I think, Mr. Robbins, these are the only generalizations that I raised that I didn't satisfy yesterday.

Q. In conclusion, Professor Bradly, you would say that your opinion of this work is of the fact—it includes the fact that it is a work of literary merit?

[fol. 104] A. Yes sir.

Q. Would you say of substantial literary merit?

A. Of substantial literary merit.

Q. Does it contain in your opinion, a beauty in literary writing?

A. I think it still is extraordinarily good. It's a first novel. It contains irregularities, therefore, in its level, but a symbolic work requires a style not only of dignity but of sensitiveness and this author has that power.

Q. And you find that it contains a sincerity of purpose?

A. There is no doubt in my mind of the author's purpose.

Q. All your testimony based on this novel viewed as a whole, and its dominant themes?

A. The whole work and the individual virtue of the parts to construct that work. There is this two-way relationship.

Mr. Robbins: I have no further questions.
Mr. Kent: I believe I have one or two, your Honor.
The Court: Cross-examine.

[fol. 105] Cross-examination.

By Mr. Kent:

Q. Professor Bradley, did I understand you to say yesterday that you had made no professional reviews of novels since the year 1932, approximately?

A. No, I believe you misunderstood me.

Q. Well, that is what I thought you had said, that you hadn't reviewed any novels.

A. No, I think his Honor asked me about the period of my greatest activities as a literary critic. I meant to explain that that had been twenty years ago when I was a young instructor, and being an assistant literary editor. At the same time, I did write a good many reviews of what might be called current or popular books, whose title I can't recall without going back into the records. Then I was asked whether I had reviewed any books recently, and I said from time to time, I did.

Q. Now, this particular book, "The Devil Rides Outside," how did that come into your possession?

A. It was sent me by Mr. Robbins. He sent it to me and asked me for my opinion of the book as a work of literature.

Q. Had you ever done any reviewing for Pocket Books, Inc. before that time?

A. When you say reviewing, are you——

Q. I mean, in a professional way?

The Court: The question is very simple, Professor. Have you ever done any reviewing for Robbins—for this company?

[fol. 106] By Mr. Kent

Q. Either Robbins or Pocket Book?

A. Mr. Robbins has, from time to time, over the last five years.

The Court: The answer is either yes or no.

A. Yes.

The Court: Now, you can explain it.

By Mr. Kent:

Q. all right. And you would receive remuneration for your efforts, would you?

A. I'm a professional literary person.

The Court: The answer to that again?

A. The answer is yes.

By Mr. Kent:

Q. You are acting like a lawyer now, Professor Bradley.

The Court: Now wait.

Q. Lawyers are notorious for not being able to give a one-word answer.

The Court: I think that should be stricken.

Mr. Kent: I want the Professor to feel at ease.

The Court: If you had probably tried to read those two excerpts the way he did yesterday, you'd fail miserably.

A. May I say I regard the comparison as a compliment?

Mr. Kent: Off the record, the Judge and I were remarking how very well you read those passages.

A. Thank you, sir.

Mr. Kent: Of course, not the interpretation, the mere reading?

A. I understand.

Q. Now, you say you have from time to time, been asked to review some of the Pocket Book editions?

[fol. 107] A. Yes. May I add, not only for Mr. Robbins. That is, from time to time, a publisher will send me a book and ask my opinion.

The Court: You see, here is the thing, Professor. You will have to understand, he will ask you questions, he wants an answer to; then the counsel on this side will go over that again and give you all the opportunity to explain, because he wants you to put your best foot forward.

A. Yes, your Honor.

The Court: Don't worry about leaving anything hanging, you have pretty good lawyers on both sides. They will take you out of any spots, go ahead.

A. Thank you, sir.

By Mr. Kent:

Q. How many books have you reviewed for Pocket Books?

A. I think I am right, you see, college professors don't categorize things this way. I think I am right in saying no pocket books were ever referred to me before.

Q. This is the first Pocket Book edition?

A. I think that is right.

Q. Did you ever review any books that have previously been in hard cover editions?

A. Oh, yes.

Q. For the purpose of recommending to Pocket Books whether or not it should or should not be published?

A. Not to Pocket Books, no sir.

[fol. 108] Q. Some other paper?

A. That is right.

Q. Paper binding company, is that right?

A. That is correct.

Q. Now, this which you have told us you had previously discussed, of course, with Mr. Robbins and Pocket Books, and so on?

A. Yes.

Q. After your review, did you submit to them a written report of your—what your review would be?

A. An opinion very like what you've just heard, sir.

Q. And you based your opinion, of course, on the professional literary qualities which you found in the book, is that right?

A. Yes, that is right.

Q. You don't, of course, purport in any way to be a moralist?

Mr. Robbins: Now, your Honor please, I just would like some definition of what counsel means by moralist.

Mr. Kent: I think the Professor used it in his own testimony.

The Court: I have a habit in insisting that objections be made, rather than talking across the table. Do you object to that question?

Mr. Robbins: Yes, your Honor.

The Court: Very well, your objection is sustained.

By Mr. Kent:

Q. Now, Professor Bradley, you described, if I am correct in my notes here, yesterday, the book as being a very violently passionate at the beginning, the first half, The Cloister Within.

[fol. 109] A. I have the feeling that the passion mounts through the book. I think that there is an element of acceptance of material attitude toward love and passion in the beginning of the book, and that the intensity mounts through the volume.

Q. In other words, you will say now in agreement with me that there is violent passion throughout the book from the beginning to the end, is that correct?

A. I am not entirely sure that I know what you mean by passion or violence.

Q. You just described it, accepting your definition.

A. By passion, deep feeling.

Q. Yes.

A. And I think the deep feeling of the book intensifies, yes.

Q. Do you also refer to passion as referring to feelings of a sexual nature?

A. I would distinguish that by saying sexual passion.

Q. All right now, when you were saying that the sexual passion mounts through the first half of the book, during "The Cloister Within" portion, did you mean to infer that it was your impression that the sexual passion was confined to half the book, and that the other half is spent in a declining manner of, or attitude towards sexual passion?

A. If I understand you correctly, I don't mean to restate your phrase, but may I say that I think while the spiritual passion mounts throughout this book, the sexual passion, by which I mean the ability to participate in sexual activity without feeling remorse or anything to temper it, actually [fol. 110] declines in the course of the book, as the spiritual passion mounts.

Q. You recall reading the book, don't you?

A. Very well.

Q. The book has 579 pages, I believe?

A. It has.

Q. The last?

A. The last.

Q. What would you categorize what Mr. X was concerned with with Madame Renee on page 560, would you call that sexual passion, yes or no?

Mr. Robbins: If your Honor please, I should like at this time to report an objection. I am very much opposed to a treatment of this book to particular passages and particular excerpts.

The Court: That has been gone into and I have permitted reference both in your arguments, and I have also stated that your objection will remain throughout the trial without restating it.

Mr. Robbins: Thank you.

The Court: So you will have the benefit of that objection.

Mr. Robbins: Thank you.

The Court: Now, just to clarify this. The conflict continues throughout the entire book, and finally the spiritual wins out, is that it?

[fol. 111] A. Yes, your Honor. I am trying to distinguish which—between spiritual passion and sexual passion.

The Court: Throughout the book, it starts and varies in degree as I get it, and then the spiritual wins out.

A. I feel that the spiritual passion mounts as religious impulses clarify it, and that the sexual passion reduces, yes sir. May I say that 560, if I remember——

By Mr. Kent:

Q. I believe starting at 564, to be exact.

A. 564. I think that's a continuation of the same scene.

Q. Yes. The bedroom scene with Madame Renee.

A. This is, of course, the last scene to which I referred a few moments ago, I could only restate what I said there.

Q. Well, can you answer my question?

Mr. Kent: Mr. Kirk, would you please read the pending question?

(Last question read by the Reporter.)

A. You have asked two questions, sir.

Q. I will ask one question, would you call that sexual passion?

A. May I ask what you mean by that?

Q. Professor, how old are you?

A. I think it's on the record. I mean, sir, I am trying to answer your question but that is a pronoun which I am not sure. You mean, may I ask, you mean the passage? It's a record.

Q. What the passage would indicate to you. After all, you spent sometime previously, Professor, telling us about the literary work.

[fol. 112] A. Right.

Q. The various passions and the violences and so forth, and how it affected you and what affect you interpreted the author's intentions to have, as the conflicts mounted and rose, and then started to decline, and the relationship between their sexual attitudes toward each other. Now, you profess lack of knowledge when I ask you a question as to sexual passion.

Mr. Robbins: I object to the characterization of the Professor's lack of knowledge. He asked the Prosecutor what he meant.

The Court: When you ask what you mean, it indicates you don't know.

A. That is right, sir.

The Court: And the Professor was the first one to use that phrase.

A. It's very simple. I am trying to answer your ques-

tion, but you asked me to answer a complex question in a word.

The Court: He didn't say in a word, you go ahead and answer.

Q. I merely asked you.

A. That's what I started to do. This is a passage in which Mr. "X" is resisting the——

Q. Well, no. Now, I don't want you to again—I say, may it please the Court, it is not responsive.

The Court: You say it is not responsive, I think it is. In other words, as I get that passage, there is a definite fight there, in his own make-up, between his relationship [fol. 113] with Madame Renee, is that it ?

A. Your Honor is expressing it as well as I could.

The Court: Thank you, but——

A. That's what I am trying to say.

The Court: Go ahead.

A. Well, if I may repeat that, it seems to me very clear, there is this conflict between the protagonist's spiritual nature on the one hand, which has been augmented by this many experiences and by the comfort of the church and of counsellors to a point where at once he is in conflict with his own instinctual nature and again with the passion and determination of Madame Renee to exercise her power over a younger man, and this is the conflict.

Q. Well, do you feel that if Madame Renee were younger and more charming, the end result might have been different?

A. I am not competent to answer that.

Mr. Robbins: I object to that as a hypothetical question and a set of facts not before the Court.

The Court: Don't they usually ask hypothetical questions?

Mr. Robbins: I appreciate that, but that's a book that hasn't been written.

The Court: I thought you were going to say he is an expert in literature and not other matters.

A. I would like that to be on the record.

Q. Professor Bradley, what are the ages of your students that you teach at the University of Pennsylvania?

[fol. 114] A. I didn't hear.

Q. What age group do you teach at the University of Pennsylvania?

A. From freshmen to candidates for the Doctor's Degree. Very few freshmen and many more of the Doctorates.

Q. Some of us were freshmen at fifteen and sixteen, and some of us at twenty-two.

A. The average age for them is seventeen and-a-half to eighteen-and-a-half. When they come to college, most of my young men and women will be upper classmen, nineteen or twenty, and, of course, the graduate students in the Universities now are sometimes as old as forty or forty-five. So, it's a wide range.

Q. Now, would you recommend this book to your freshmen or sophomore students, yes or no?

The Court: I don't think that should be yes or no.

Mr. Kent: All right.

By Mr. Kent:

Q. Let's have a maybe.

A. Give me a break.

Q. Probably help the Court.

The Court: In other words, I can easily understand where some students may be treated differently than another. You have an average age there, you don't have a definite age.

A. That, your Honor, was not the problem in my mind. But this book is one of many books that are in competition for my reading list. If I may make a value judgment, the value of this book in my judgment is good enough to go onto my reading list for the student and the moral attitudes would not keep it from that list.

[fol. 115] Q. Do you think now that you've mentioned morals, do you think reading many of those passages that are contained in that book would tend to deprave the morals of youth?

A. I do not.

Mr. Robbins: Your Honor please, I hate to interrupt. But when he says youth, is he referring to the youth of the Doctor's classes at the University, or youth in general?

Youth may be nine years old or might be a minimum of seventeen-and-a-half in the University of Pennsylvania.

The Court: I think the professor is intelligent enough to take care of himself on that. You have the right to ask him questions later and see what he is referring to.

Q. Do you feel, Doctor, that the passages in the book would suggest to the minds of the young, of either sex, thoughts of an immoral and libidinous character?

A. I should think they might suggest thoughts of a libidinous character, yes.

Q. Do you feel, Professor Bradley, that many of these passages here would stir the sex impulses and excite the sensual desires?

A. I should think in general, not. You are still referring to the age group of people that I teach, is that——

Q. Well, let's confine it to freshmen and to sophomores.

A. I am sorry, they don't come to me that way, they are mixed, but I would say this, that if I may, I am not dodging your question, but that those of us who deal with young people realize that there are ever so many differences among them.

[fol. 116] Q. That is right.

A. We realize that some are ready to accept certain ideas, intensities and ideas that others are not ready to accept. We try, however, not to suppose that knowledge or truth or actuality is going to be harmful to any one and that whatever he is able to understand and accept at any particular moment, he will take from the material given in the classroom.

Q. Have you finished?

A. Yes.

Q. Did you characterize that phrase "knowledge and truth" in reference to this particular book?

A. In reference to experience.

Q. Well, you feel, then, that that is a truthful book?

A. I do, yes.

Q. All right, that is your opinion?

A. That is my opinion, sir.

Q. Now, do you feel—may I direct your attention, Professor Bradley, have you seen People's Exhibit No. 2, being some of the excerpts that were taken from the book?

A. Yes, I have seen some of them.

Q. May I direct your attention to People's Exhibit No. 2, being marked No. 20 of that Exhibit, being on page,—commencing on page 117 of the book, going through 118, and ask you whether or not the vivid description of the sex act as depicted therein, is necessary for the literary style, as you have depicted?

[fol. 117] A. Yes.

Q. You feel that it is?

A. Yes, I do.

Q. Do you feel that that passage is in any way lewd or lascivious?

A. I think I said earlier in my general testimony, that I am required in a literary criticism of a book to see it whole. And this has relevance to what you just said.

The Court: The Court has already ruled that he's going to take the testimony as to any part contained in the book, at least at this stage. I haven't passed on the constitutionality yet. So you will confine yourself to answering the counsel's questions.

Mr. Robbins: If your Honor please, I shoud like to interpose this objection. I realize what the Court's ruling has been. I believe what the witness was attempting to answer was the fact that he was asked for his evaluation of this scene and his answer is that in evaluating this scene as an expert witness, and giving his opinion about it, he is, in his opinion, having to relate it to the whole. This doesn't mean that we can discuss excerpts in accordance with your Honor's ruling, but he is giving his evaluation, which the Prosecutor is asking for, and relating it to the whole, and I believe he should be entitled to answer with respect to the correlation of this scene to the whole.

The Court: He is asked one question. Taken alone and by itself first. Then he can explain, if you want him to explain.

[fol. 118] A. I had in mind only to warn the counsel of the prejudice which is in my mind. You asked me to give an opinion that it is impossible for me to give, having read the whole book. That is, I am merely warning counsel that it is impossible now, having read the whole book, to separate this passage from its context. If this were handed

me without the book and had been so, I would have a reaction to it.

By Mr. Kent:

Q. What would your reaction be?
A I do not know, because it didn't come to me that way.
Q. You are not able to say?
A. No.

The Court: You say you can't tell whether that's wrong or not, if it were handed to you by itself, just because you read the book? Aren't you trying to justify it in your own mind because of the other good parts in the book?

A. What I am trying to say, your Honor, that this passage doesn't have any existence outside this book.

The Court: All right, you are a literary expert. Somebody hands you that. Is that obscene or isn't it?

Mr. Robbins: If your Honor please, I should like to make an objection?

The Court: You see, a man reads this book, he may read it all. A man may take the excerpts that you have over there, that are objected to. Somebody is going to read those excerpts. Just because the book has a good part doesn't mean that it doesn't have any bad parts.

[fol. 119] Mr. Robbins: No, your Honor. I don't believe you let me finish. I didn't object to that which you were saying or that concept. What I am objecting to now is your final question, is it obscene? I don't believe any literary witness, and that is all Dr. Bradley was qualified here, as a literary expert, as obscene, because that is the question in this case and I don't believe a literary expert is qualified.

The Court: You are all getting excited.

Mr. Kent: Certainly literary people have morals also.

Mr. Robbins: I should like to record an objection on the record as to any expert testimony on the question of obscenity, that would invade your province, your Honor. That is the question of fact in this case and I'd like to object on that ground.

The Court: I've heard your objection. The Court feels that this book was reviewed at the specific request of the company by the witness, and the only objection the police

and the Prosecutor have to that book, is that it is obscene, and that's probably the reason that we have the expert here. Should it go out or shouldn't it go out? I don't think there is much question in my mind, even right now, that the book is of some literary value. The only question disturbing me, is do you have to have all these details of minute feelings in it during the sexual act, and so forth, to make it a good book?

[fol. 120] Mr. Robbins: If your Honor please, counsel, the Prosecutor here, himself, quoted to your Honor yesterday, a quotation from the Highest Court of the State of New York Unfortunately, the decisions in Michigan are silent on this, saying that expert testimony couldn't be produced on the question of obscenity. That was a question in that case for the jury.

The Court: I've stated my position on that very definitely. I am receiving that to guard against any possible prejudice I may have, because I want to hear what people of different schools, what people of different thoughts, think about the matter, so I am receiving it in an advisory capacity.

Mr. Robbins: All Right.

The Court: Just as I say, Judges are human. One may decide one way because of his tr-ining and early childhood. Another may decide another way. I think that in an advisory capacity, I want to hear that. I want to see what the world's thinking about it. After all, this expert, as I understand it, Professor Bradley, was brought here in a case where he knows that, at least the police of the City of Detroit and the Prosecutor of Wayne County, feel that the book, because of obscene passages and because of—I am not forgetting your constitutional question—is objectionable and should not be sold generally throughout the streets of Detroit, or in the selling places.

Now, if that were handed to you, Professor Bradley, [fol. 121] alone, that passage, that's on that particular page or those particular pages, you say that you would not feel that you could, because you read the book, determine whether that is obscene or not?

A. I would very obviously—you see, your Honor, I must answer within the range of my own competence and experi-

ence. I do not feel that I am competent, legally, to rule on obscenity.

The Court: Wait, you are here then, telling me, that you have no competence at all to rule on whether a book is obscene or not?

A. Legal competence, your Honor. I think that I have opinions of my own that I cherish, and I am not refusing, certainly, to answer questions on that ground. But, I would answer very specifically, that if this passage were handed me alone, I would see it was a part of something bigger and I would say "Why is it this way?" I would say "What is the purpose?"

The Court: In other words, you feel that if there is some good somewhere, or it's a part of something that basically tends to show it, let's say the conquest of spiritual passion over physical and sensual passion, that you might say it's good, if it helps describe the situation?

A. This symbol of action is relevant to other symbols of action throughout the book. It has the same rhythm, it has the same purpose. I must see the book whole, as I must see the statute whole. I think it would be an offense of taste if we covered certain areas of a statute or a picture and left uncovered other areas of it. There might be a misunderstanding if you don't look at the whole picture [fol. 122] of art, and within that range, I would like, sir, to answer your question as well as I can.

Q. I think you could answer the question more directly if you wanted to.

The Court: That will be stricken. What you think doesn't mean anything. Just ask the questions. The Professor said he can't tell you if it's bad or not, because he's read the whole book. That's the answer, go ahead.

By Mr. Kent:

Q. I will direct your attention further to pages 120, 121, 122, to 123, and ask you the same question concerning those passages.

A. This, of course, is a continuation of the same episode.

Q. That's the climatic portion?

A. Yes, that is a scene in which, as counsel has suggested, sexual fungus takes place and it is related later on

in the book to a scene of devotion, in which the rhythms, that is, the linguistic rhythms, the poetic rhythm of this passage is correlated by similar rhythms to a religious experience, in which it is the obvious intention of the author to let us understand that the energies in nature are one energy, and that we have the capacity to direct them toward materialistic expressions or towards spiritual expressions.

Q. Are you referring to the passages on 350, 351 and 352, when you say it makes direct correlation to that, the time when Mr. "X" is in church and he is praying to the Virgin Mary? Did you notice also, Professor, the exact description of the actual physical act which he describes earlier [fol. 123] in the book, with Madam Vincent? Did you notice that he gave the impression that, and used the same description, the same motion at the time that he tried to depict a fusing of his soul with that of the Virgin Mary?

A. That's the point I was just trying to make, although I did not say the fusion of his soul with that of the Virgin Mary. That is a concept of medievalism, which is very active in some of the most sacred writings of the church. In the mystical writings of Saint Francis and Saint Augustine—in the Confessions of Saint Augustine, you will find passages of that sort. You will find them in mystical. I will live the——

Q. I think his Honor has already ruled on the standard of comparison.

The Court: I meant by comparison of these books you have on the market now. I didn't want to run into say "Isn't this one worse than this one?" or something like that.

A. The cult of the Virgin, of course, is the literary area which is involved here.

The Court: Now, you start talking about the book. Then you started saying something about outside of the Catholic Church, what about that?

A. The consistency of religious literature, your Honor, is a phenomenon that has been considerably studied and it is interesting to find the mystical instances of a Puritan Saint like John Edwards have pretty much the same emotional character and clarification, and a tendency to reduce [fol. 124] themselves to physical symbols, because after all, symbols have to be physical. That you will find in the

meditation or in the mystical experiences of Saint Francis or Saint Augustine, or others of that sort, so that I would, if counsel will permit, I would say that I can't take the Madam Vincent passage alone, because there is this passage in the book, and that's my very point, and that I know, from my literary studies, that whoever wrote this book, understood the cult of the Virgin and the literature connected with it and had this in mind as a part of his methodology, for revealing the continuous growth of religious experience and control and mystical revelation of the forces that are inherent in this man's life. That is, of course, one of the reasons I think it is so serious.

By Mr. Kent:

Q. Do you feel that that passage was necessary?

A. I do, yes.

Q. Do you feel that the infinite details depicted therein were necessary in this literary work, to keep it a work of good style?

A. In this passage, more than in many others, detail is absolutely necessary in order to build up the background for the second symbol based, as I've said, on the cult of union, spiritual union with the divine. The experience of spiritual union with the divine which has been represented in Christian symbolism through our attitude toward the Virgin as a symbol of that, as the intermediary between material force and spiritual force.

Q. Do you feel that the depicting of that spiritual union [fol. 125] in a physical manner as depicted there, is a little bit sacrilegious?

A. It has the authority of the church.

Q. Do you feel that it might be indirectly blasphemous?

Mr. Robbins: Now, if your Honor please——

The Court: He can answer no, that's the end of it, if he feels it isn't.

Mr. Robbins: I wasn't concerned with the answer, I was concerned with the line of inquiry.

By Mr. Kent:

Q. You don't feel that those passages in and of themselves are lewd, lascivious, obscene or immoral, is that correct, Professor?

A. Of course, I still object to your "in and of themselves." I do not feel that those passages are lewd, obscene, or lascivious. I could say that.

Q. Now, I will direct your attention, Professor Bradley, to what we have numbered as excerpt No. 39 through 50, being pages 198 through 210, being a little incident of which—which depicts a cozy arrangement with one Lucette, who is also a student. Do you feel that that passage in and of itself, or those passages and pages are lewd, lascivious, obscene or immoral?

A. No, I do not.

Q. You realize, of course, that both of those people were students?

A. I do.

Q. Both of those people were young people?

A. I do.

[fol. 126] Q. Neither one of those people were married to each other?

A. That is correct.

Q. Neither were the persons who helped them make this arrangement, this, I think that was Louis and Monique?

A. Monique.

Q. Who were also living together on such cozy arrangement?

A. I did not use the word "cozy."

Q. Well, convenient, anyway, because that's the word that was used in the book, right? It was an arrangement of convenience?

A. Yes.

Q. Do you feel that that is immoral?

Mr. Robbins: Now, if your Honor please——

The Court: Your same objection and ruling. In other words, does he think it's immoral to depict this type of living among the students.

A. May I say this?

The Court: No one is trying to trap you.

A. I have no objection whatsoever to answering the question as to this passage, but counsel has asked me whether I think those acts are immoral and there, it is beyond my competence, because I do not know the people.

Q. I see, you want to separate it?

The Court: Why don't you let him finish. He said because he doesn't know the people.

A. I don't know these people, I know only what is written on these pages, so that I should answer in this case without relevance to the whole book necessarily, your [fol. 127] question, but the question, not as to the behavior of the people, because that is not the question.

Q. Do you think that the passage that depicts such acts——

A. No, sir, I don't think this passage is.

Q. Standing of itself?

A. Either in the book or of itself. If this were brought to me outside of the book, it is one of the few passages in the book I think as a realistic description of this, I think, could possibly stand alone or stand within the book.

Q. In other words, the book could stand without that passage?

Mr. Robbins: No, sir.

A. That is not what I said.

The Court: The passage could stand alone without being objectionable?

A. What I am saying is that this passage might have been written alone, but that is——

The Court: In other words, do you mean, let's put it this way: That what's right amongst French students may not be considered right here?

A. Your Honor, I am talking about the passage. The piece of writing itself.

The Court: Well, you said something about you don't know the people.

A. Yes, sir, I don't know these people.

The Court: Now, you have right there, a situation where this happens in France. You mean that would enter into [fol. 128] your consideration?

A. No, not because it happened in France. If it happened in the United States, I would still, it seems to me, be incompetent to rule on the conduct of other people without knowing them and knowing the whole circumstances.

The Court: Well, can you think of something——

A. Not within the area of my competence.

The Court: Can you think of some circumstances where that would be moral?

A. You see, your Honor, we are speaking here not of the actualities of life as they might come before the Court. We are speaking of the use of life as made by a literary man. Consequently, I do think you are taking me out of my range of competence when you are asking me to make a decision which only a Court of law could make.

The Court: Very well.

A. Regarding public morals.

The Court: Very well, that is all I want to know.

A. I don't think I should be put in that position. I think I am a literary expert.

The Court: But this book is also being criticized here.

A. I understand that, your Honor.

The Court: Because of the material in it, as being immoral.

A. Precisely.

[fol. 129] The Court: And if all you intend to do is tell us that the book has some literary value, then that's a different story.

A. I am advised that the ultimate judgment is in your hands.

The Court: No, no. I mean if the purpose of your testimony is just telling us that this is well written, then, we will accept that.

A. May I summarize an answer for counsel?

Mr. Robbins: Well, your Honor, I think you've understated our point of view with this, but I can't find myself in disagreement with you. It isn't just of some literary value. We've asked Professor Bradley to testify, because we think it is of substantial literary value.

The Court: Well——

Mr. Robbins: It may—I didn't mean to interrupt you. It may well be there is balance of contrast in which the

literary value of the work might be considered to outweigh whatever objection somebody else might have to it. We don't want to be put in the position of saying that all we can ask from Professor Bradley is that it has some literary value. We will try to get the most, as far as your Honor's impression is concerned, that it is of substantial and great value, not that it's the greatest in the world, but it's of serious work.

A. May I——

The Court: You content, Mr. Robbins, that a book of great literary value, as far as skill in the writing, if it's skillful to the point where it's excellent, comparable with the great writings of the world, that, then if it con- [fol. 130] tains material that's obscene, immoral, improper and so forth, that that will be permissible because the book has a great literary value?

Mr. Robbins: Your Honor, there, too, you have me out of my field. It's hard for me to answer the question of containing. I am saying that a book of recognized and sincere literary value and purpose, if judged as a whole to be considered a serious work of nature, whatever is in the book must be integrated in the whole. No particular portion would be obscene because it would be related to the whole. I am very much out of place in a containing atmosphere.

The Court: It seems this morning I am trying to put everybody out of place, but I am not.

Mr. Robbins: I didn't mean that as a slight to the Court.

The Court: Let's go on. Go on, continue.

By Mr. Kent:

Q. Now, in reference to those passages under consideration: Would you recommend that passage in and of itself as a piece of literature to be read by your students at the University of Pennsylvania?

A. Yes, I would.

Q. I didn't hear you.

A. I would, sir.

Q. Do you feel that the passage is suggestible?

Mr. Robbins: I object to the—what the word suggestible means.

[fol. 131] The Court: Suggestive.

Mr. Robbins: Suggestible, he said.

The Court: All right, we make mistakes.

Mr. Robbins: I don't mean to be picayune, your Honor, even suggestive, I don't know what that means in this particular case.

Q. Do you feel that the passage might be suggestive as a method of living for students?

A. This, as a piece of literary construction, this is the effort, in my interpretation, sir, of the author's desire to isolate a relationship that is true and actual and in itself quite separated from a social framework, a good thing. I don't see how I would read this—I am willing to make this first personal pronoun I here, because I don't want to implicate other people. "I read this with a sense, that whether with or without the benefit of clergy, we can lay that question aside, which is a religious and social convenience, that the situation between Lucette and Mr. "X", as I call him here, is essentially true, honest and good. We then have to ask ourselves why the author used this relationship within the framework of the whole novel, what relation it has to other episodes in the novel, but you've asked me to isolate that. I would go so far as to say the reason for not regarding in my mind as a piece of pornography, if it perhaps, even chance have been a short story, would I give that collection to my boys and girls in college to read, the answer is yes, without compunction, because I know that they will make their own judgments in respect [fol. 132] to the duty to society represented by marriage, but the meaning of this piece of work, is that the freshness and actuality of love between two young people, represented even at the physical level, may be good in itself, in itself, as isolated from other goods which may be sought, which are social or religious, you see?"

Q. Is it your impression that Mr. "X" and Lucette were in love?

A. I get that impression. Love needs definition, doesn't it, counsel? Aren't we agreed?

Q. Aren't we agreed, Professor Bradley, that this was

a matter of convenience for the both of them, and that Lucette, in putting herself in such a position, felt that she had to give Mr. "X" the favors he wanted any time he called for it, because of the fact that he took her in?

A. It is distinctly clear here that she feared that might be the situation, but that as the situation resolved itself, she found that that was not so, because he had a decent respect for her, and for her feelings. It grew to be a relationship in life which had meaning, which had reality, and which I believe the author meant to isolate from its ordinary social convention in order to show that in itself, considered at the level of experience, her experience alone, this relationship in life without social convention is a good thing, and that was the impression that I got from the reading of those pages. I happen to have certain social attitudes which are different, but that's the artistic thing in this thing.

[fol. 133] Q. Well, all of the young people who might read this book are not artists as far as literary bent.

The Court: Wait, that's a statement, not a question. You can use that in your argument later.

Q. Professor Bardley, may I be so personal as to ask you if you have children?

A. I have two.

Q. Would you mind telling the Court and myself, please, their ages?

A. Their what?

Q. Their ages.

A. No, I have no objection whatsoever to that. I have two very nice daughters, one is twenty-two and the other is twenty four.

Q. Married or single?

A. Beg pardon?

Q. Married or single?

A. Single.

Q. Would you——

The Court: I think I anticipate the question and I am going to stop you from asking it.

Mr. Kent: I will withdraw the question.

Q. I will direct your attention to the passage on page 366 of the book, No. 69 in the excerpts, running through page 367.

A. Beginning on 366?

Q. Yes.

A. Yes.

Q. In the taxicab,——

[fol. 134] A. Yes.

Q. Do you recall that passage?

A. Yes, I do, sir.

Q. Do you feel in and of itself, standing alone, that that is of literary value?

A. Yes.

Q. Do you feel that, standing alone, and of themselves, these passages are lewd, lascivious, obscene or immoral?

A. In speaking of itself, literary value, standing alone, I am thinking of the style in which it is written. Once again, I am afraid I like to be a contrary witness, but the second question that you asked me has a different association. I am sorry, it is simply against my conscience to say anything else.

Q. Do you feel that this particular passage adds anything to the literary value of the book?

"A. Oh yes. This is one of several passages in the book, in which our principal character, the protagonist, is following quite definitely his instinctual parts of his intelligence. He is surrendering at once, I think, to a desire to somehow punish Madame Renee by an act of independence. He feels that she has an unhealthy kind of desire to control him, and secondly, he is a young man who has surrendered to sexual passions, desire for it, and this, as I say, is one of the passages in which the author has attempted to show the continuation of that drive, while at the same time on another level, the spiritual experience and the reasonal and rational controls are built up."

[fol. 135] Q. It's evidence of lust, isn't it?

A. I think so, yes, quite definitely.

Q. Now, commencing on page 564, through 567, the last incident with Madame Renee, where Mr. "X" finds——

A. Well, excuse me. But isn't this the passage we discussed before?

Q. Yes, but we discussed in relationship to something else.

A. I am sorry.

Q. Take this passage standing in and of itself, do you think that has any literary value?

A. As I said before, I am answering on the basis of the style of the language when I answer that question. It is of literary quality in its language and control and expression and communication.

Q. One further question, and I believe, the last. Do you feel that any piece of writing has some literary value?

A. Oh no. That is a somewhat technical question. It is a matter of intention and communication. For example, a phone book, I suppose, is an evidence of language, but obviously not of literary merit and yet, it communicates. Now, you've got different levels of communication. I should suppose a conventional answer is that you can find the level at which communication passes into literature or art.

Q. I mean any piece of prose?

A. Does any piece of prose have literary value? I don't think I could say piece of prose does. I think I read things in Philadelphia papers, I don't know about Detroit [fol. 136] ones. Prose, that I don't think are——

Q. That is, you don't agree with their content?

A. Oh, no.

Q. You don't agree with the style or the literary quality?

A. The point at which communication becomes literature in my mind, is the point in which it communicates beyond substantial matters, definition, mere definition and description of things, and begins to touch the world of the spirit, to awaken the imagination and the devotion. It's the same language but used differently and from the 'phone book to levels of which spirituality and imagination are the objective of writing and communication, we have an area of great usefulness. I need the phone book, but it is not literature.

Q. Therefore, it is of some literary value?

A. It is of no literary value, communication value, but not literary.

The Court: I think I've heard enough of that. For instance, some things communicate what happened. If I said

John Jones got killed last night, that would tell you something, but it has no particular literary value?

A. That is right.

Mr. Kent: I have no further questions.

[fol. 137] Re-direct examination.

By Mr. Robbins:

Q. Professor Bradley, just one or two questions to clear up the implications of your cross-examination: Some question was addressed to your compensation. What have you been told about your compensation, if any, in this case?

A. I've been told I shall have my expenses to Detroit paid and I shall be compensated for any loss in my own regular professional activities at home.

Q. As a result of your trip here, and the time you spent here?

A. As a result of my trip here and the time spent.

Q. Second of all, there was a statement made with connection with other books you have been consulted about. From time to time—put it this way, you described yourself as a professional literary witness?

A. I did not.

Q. I didn't hear that.

A. I described myself as a professional consultant in literary matters, and this relationship is far beyond the publishing business.

Q. My lack of hearing prompted my question. There have been, from time to time, you have not appeared as a witness, but have been consulted?

A. Very seldom I have been asked to be a witness when consulted.

Q. From time to time you have refused to act as a witness?

A. Yes, I have, on numerous occasions.

[fol. 138] Mr. Robbins: No further questions.

Re-cross-examination.

By Mr. Kent:

Q. Was that based on literary style?

A. When I cannot defend a book, either because of its literary style or because I feel that it has not justified itself from a standpoint of moral or conventional value.

Q. You are dealing with moral value now, and now you are able to speak of the moral value?

A. I am not able to define obscenity.

Q. Are you able to define immorality?

A. Your Honor, are we——

The Court: Well, the only thing he asked you, if you are able to define it, if you feel——

A. I am not.

Mr. Kent: That is all, Professor, that is all.

The Court: Go ahead, I want you fellows to finish.

Mr. Robbins: I have no further questions.

The Court: Very well.

If you were on a committee, you heard the testimony of the librarian here?

A. Yes, I did, sir.

If you were on that particular committee, would you have restricted the use of this book and placed it on an [fol. 139] unlisted, closed shelf?

A. I've had no experience, but I think I would not. I have not been called to make that kind of judgment.

The Court: But I mean, from your evaluation of the book?

A. No sir, I think I would not have put it on a closed shelf. I have no criticism of the Detroit Library.

The Court: No, I am not asking it for that purpose. My ownly reason in asking that is to see what you think of this book. Now, these books that you say you refused to act as a witness, was it because of the crudeness, the use of vulgar terms, that caused you to not support the book or testify for it?

A. No, your Honor. "I do not think that the question of what material is used in a book of art is relevant, but the intention and the affect of the work or art.

The Court: I see.

A. And, consequently, if materials are blended in such a way that the effect is not lofty, then we, I think, are in a position to criticize the materials themselves, because they have not been raised to lofty uses. Otherwise, the artist may make a very mean and ordinary event, something that has a lofty effect upon our soul and our emotion."

The Court: You feel then that by the use of well chosen, very descriptive and, let's say, high-sounding phrases, words and phrases, that that takes it out of the obscene, vulgar, immoral class?

[fol. 140] A. I think that has been the experience of literature through the ages. The loftiness of the spirit and the use of the language for lofty purposes, has elevated the commonest of human materials and we can look at the greatest classics of literature and find it true.

The Court: Do you think that in this book, that it was necessary to describe in detail the sexual experiences of Mr. "X" and his minute feelings all during those experiences, in order to make it of literary value?

A. Yes, your Honor, I do.

The Court: Why?

A. Because I feel that the inner intention of this book is to bring the reader, make the reader familiar with his own soul and his own experience. I think that this book is intended to have what one of our critics called the shock of recognition for the reader. I think that the writer understands that we all go about, even shielding ourselves from the conscious recognition of what is present in our minds, present in our instincts, in our inner nature, so that we feel that we are surrendering to evils without ourselves, or we completely shut our eyes to the fact that there may be evil there, and that he has attempted to show us the whole working of the mind and experience of this character, in order that we should recognize ourselves and understand that the grace which he finds and G'Seau and Clement and other clerics are able to show him, is available to every one.

[fol. 141] The Court: Do you think that after read- the entire book, that the descriptions of his feelings and the spiritual side, are described in detail as to the extent that they are of his, let's call it sensual if not sexual experiences?

A. Yes, your Honor, I would say that I thought those long conversations with Father Clément and his long meditations, except that they had the desire to be impressive, through wearisomely repetition from time to time, but I recognized that it was good for me to understand fully, so that the author was justified in repeating these scenes in which the argument is carried on the spiritual plane.

The Court: You say you did not notice in those spiritual conversations with Father Clément and the others there, you did not notice that the feeling was described in very much less detail, but that the conversation itself, with the good Fathers, was in detail?

A. I had that feeling, your Honor, yes sir. It was very expansive and well proportioned in that respect.

The Court: I am talking about his feelings and description in detail.

A. Yes, I thought that his feelings were very deep at that point.

The Court: I am not asking that,—that they were described in detail to the extent that the others were, you feel that they were?

A. Yes. I should say that the passages in the church in which music is correlated with his feelings, and his meditation in his room, hearing the Mass being sung at a distance, all of these are part of what I mean when I say this [fol. 142] is a great deal of emotional building up to his reaction of the moral problem."

The Court: One more thing, Professor. You used the word symbolic. Now, to me, a symbol is something that symbolizes something, something that stands for something. In this book, isn't it just the opposite, that he went into great detail, rather than using any symbol for both the sexual, sensual feelings, and spiritual?

A. Your Honor, as I used the word symbolism, I hope it is exact in terms of criticism. A symbol is an object which accumulates a great many overtones of experience or emotion. We have one of the greatest ones right behind me here. The flag is a symbol because it accumulates whole areas of experience.

The Court: We are all in accord about that, what is the symbol here?

A. So that the artist may use an action or conversation

or a character in a symbolic way, but the moment he does that, he does not have anything so simple as the fla*t*, we all know about. He has to describe in detail, the situation which becomes symbolic. He has to describe in detail the feelings, a character, whom he intends to have in our minds, this capacity for working our recognition. He must put those details there or he doesn't do anything, that is all he can. The only way he can build a character or situation that has symbolic value, is by making it quite detailed. This, I assure you, is true of many, many novels.

[fol. 143] The Court: I was just wondering which way you used the word symbolic. Now you say that the description, these detailed descriptions are symbolic of what?

A. Now, of course, it depends on the use of the word symbol.

The Court: That's what I am getting at. In other words, to me, on the fac*t* of it, being a layman, the thing was anything but symbolic as I read it.

A. May I take a concrete example which we perhaps both will recognize? I am thinking, counsel referred to what is a highly symbolic episode, in which kneeling alone in the—that passage in the church, your Honor, in which our character feels an experience which is enclosed to himself. Although there are worshippers about him, they seem to be not there, and he comes into communion in a mythical experience in a sense of unity, which becomes concrete in the vision of the Blessed Virgin, just as it had, as I've said, in mediaeval mysticism.

The Court: You mean that these instances are symbolic of feelings toward the church and symbolic in feelings towards sexual pleasures?

A. And toward many other things, your Honor.

The Court: Very well. In that sense I understand.

A. In this case, it had to be detailed, that was the point.

The Court: I think that is all.

We will take a short recess. The Court has to be in another Court for five or ten minutes.

(Court in recess.)

[fol. 144] Mr. Robbins: May we proceed, your Honor?

The Court: I want to say now that we are going to go right on until fifteen minutes of 1. Today is the,—we have

a ceremony for the admission to the bar of many new young lawyers, and the Judges will be over there, practically all of us. So, that will give us about fifteen minutes to get over to the Memorial Building. We will run right through without any recess if we can, until a quarter to 1.

Mr. Robbins: I should like to call Professor Huntley.

Professor Frank L. Huntley, sworn by the Clerk on behalf of the Defendant, was examined and testified as follows:

Direct examination.

By Mr. Robbins:

Q. Professor Huntley, you are presently attached or connected with the University of Michigan, in Ann Arbor, of this State, is that right?

A. Yes.

The Court: May I have the Professor's full name?

Mr. Robbins: Frank L. Huntley.

The Court: For the purpose of the record. I don't want you to feel badly, sir, because I don't — your first name and initial.

[fol. 145] Q. How long have you been at the University of Michigan?

A. I've been there ten years.

Q. What is your present title at the University?

A. Associate Professor of English.

Q. And before your attendance at the University of Michigan, before your professorial duties there, what University were you at?

A. I came to Michigan from Carleton College, Minnesota.

Q. How long were you at Carleton?

A. I was there just one year, because I was taken away to help the United States Army.

Q. You were taken away? You were in the United States Armed Forces?

A. I was not in the United States Armed Forces, I was a Japanese expert at that time.

Q. And before Carleton, where were you?

A. Before Careton, I was at Stout Institute in Menomonee, Wisconsin.

Q. Where were you born?

A. I was born in China.

Q. Were you a Chinese subject?

A. No sir.

Q. In particular, any particular reason for your birth in China, aside from the fact that your mother happened to be there at the time?

A. I wanted to be near her at the time of the crisis.

The Court: Please, this is a serious matter.

[fol. 146] Q. On a more serious vein, your father was on duty at the time?

A. My father was a medical missionary in China.

Q. Where was your schooling?

A. My schooling was at Shanghai.

Q. Was there any schooling in this country?

A. Yes, then I came to college at Oberlin College in Ohio.

Q. After attending Oberlin College, did you do any graduate work?

A. I did, and obtained some degrees.

Q. What were those?

A. The Mh. D and Ph. D.

Q. Your present field at the University of Michigan was what?

A. My present field is practical criticism in the Seventeenth Century literature of England.

Q. Have you had some chance also to study the monasticism of the Middle Ages and the religious aspects of that?

A. Not professionally, although I've read and I am interested in them.

Q. Have you done any book reviewing?

A. Not much, and certainly not fiction. I've done some book reviewing in scholarly journals and I have done some book reviewing of non-fiction books for a quarterly called The Michigan Alumnus.

Q. And have you written any critical essays on literature?

A. Yes, I have.

Q. What were those, on what subjects?

[fol. 147] A. Well, I've published three text books and about fifty articles on Seventeenth Century literature, mostly.

Q. What were your text books on?

A. Text books were English literature text books for Japanese students.

Q. At the University, you say your field is in English literature? Is that all you have taught, the Seventeenth Century?

A. No, I've taught almost the whole gamet of the undergraduate offering.

Q. In English literature?

A. In English and American literature, the general courses, and, of course, composition. May I add at this point, that part of my experience is that I am a member of the Hopward Committee at the University of Michigan, which has the responsibility of encouraging young writers. We were left money by Avery Hopward. We give away prizes, between Eight and Ten Thousand Dollars. We read many manuscripts by young authors. We hope that we are wise enough to select those that are deserving.

We did give Arthur Miller a prize for his first play and started Arthur Miller on his career. That's part of my job.

Q. Now, did there come a time recently when you read this work, "The Devil Rides Outside," which is the People's Exhibit I in this case?

A. Yes.

Q. About when was that?

A. That was in early June, I believe.

[fol. 148] Q. Of this year?

A. Of this year.

Q. And after reading it, did you study it and analyze it?

A. I didn't study and analyze it very closely. I read it, though.

Q. And you say you didn't study or analyze it closely; did you read it carefully?

A. Yes, I read it carefully.

The Court: What's the distinction, Witness?

Mr. Robbins: I don't know.

The Court: Between closely and reading it carefully?

A. I, well, I thought the distinction was between reading it carefully and analyzing it. I made no notes on it, I didn't have any written opinion of it.

Q. Did you form any opinion of it?

A. Yes, I formed an opinion of it.

Q. And did you form an opinion as to its literary merit and literary value?

A. Yes.

Q. And as to its sincerity of purpose?

A. Yes.

Q. And as to the value, literary value of the writing?

A. Yes.

Q. And can you tell us what that opinion is?

A. Yes. My opinion does not deviate from Professor Bradley's.

[fol. 149] Q. You were present in the courtroom while Professor Bradley was testifying?

A. I was.

Q. Did you hear the whole of his testimony?

A. I heard the whole of his testimony.

The Court: You mean you were here yesterday, also?

A. I was, sir.

Q. And you've been here all this morning?

A. Yes.

Q. Besides saying that it doesn't deviate from Professor Bradley's, can you give us in your own words, some, not perhaps the length of Professor Bradley's, because I shouldn't want to take up all the time of the Court.

The Court: The Court has nothing but time. You put in everything you think is necessary, because I am not restricting you on anything.

Mr. Robbins: I quite understand that, and I shall withdraw the comment.

The Court: Very well.

Q. Can you give us in your own words, in any event, some appraisal of the literary value, sincerity of purpose, and the dignity of the writing of this work?

A. Yes. Perhaps I have to start a little farther back, and think in terms of art. In the artistic process. Art,

of course, I am sure, imitates human experience. It gives us human experience in a different form, conveys that experience, sometimes to us in a way which makes that ex- [fol. 150] perience memorable. It imprints upon our minds, therefore, a kind of pattern in which we often notice that experience in real life, does not possess. The business of the artist, therefore, is to select experience as he knows it, and as he imagines it, and oftentimes his gift of imagination is such that it is the reality, rather than the actual experience.

Mr. Kent: Excuse me, Professor. If it please the Court, I don't want to appear obnoxious in making an objection and destroying the Professor's thought, and I know that it's not my province to object to the unresponsiveness of the question, but I believe the question propounded to the Professor had to do with this particular book rather than going into the fields of art, literature generally.

Mr. Robbins: He was, if I may answer——

Mr. Kent: Unless, of course, the Professor is using that as a background before he gets into the book itself.

The Court: I am not going to restrict that. I take it you're reviewing this book as an artistic work?

A. That is right, sir.

The Court: I think you can explain yourself, if you wish to refer to any other form of art. Give us the impressions you have.

A. The process of art, to my mind, then becomes a process of selection of detail and arrangement of that detail, according to principles which are within the work of art, and this, to my mind, constitutes the author's intention, so that in our experience, it's useless to ask an author [fol. 151] what he intended by this book. The answer would be "Well, I took 579 pages to tell you my intention, do you think I am going to give it to you in three words?" Now, as we view this book, that point of view, I think, I discover at least that there is this definite artistic intention which gives to the experience that constitutes the page after page of the novel, its peculiar shape, its peculiar significance.

Yesterday, St. Augustine was mentioned and he's chosen, this is part of the selection of the artist. St. Augustine is

chosen not only because St. Augustine faced this particular problem in our experience which the novel describes and resolves, but also because St. Augustine was an author. St. Augustine wrote his confessions. The confessions are not artistic in this respect that they are ordered. They are St. Augustine's real life experiences put down day by day. It becomes no accident, therefore, but part of the process of art, that this novel is arranged not by chapters but by dates, as though it were a diary. November 16, December 20, January 1, and so forth. The difference, however, between this work and St. Augustine's is that this work is arranged. It is shaped. The two parts are within the cloister and without the cloister, and we find that there is a relationship between the dates in which these two parts take place. The weather is getting colder and colder as he is within the cloister; then beginning with January 1st he comes out of the cloister, Father Clément warns him that the devil rides without the monastery walls, and we [fol. 152] get into the spring time and the time when young men's minds turn to thoughts of love, the freshening, the blossoming, the blooming of all things. So we are taken in an arrangement like that, which is part of the artistic purpose.

Consequently, it is no accident, and art is the opposite of accident. It is design, that the point of view chosen is that of the personal narrator. An artist is perfectly free to choose how he is going to bring this experience. He can pretend he is the omniscient, like God sitting up there. Here we have a character whom we call Mr. "X", within the novel. Why is this peculiarly appropriate, and this is part of the artistic design? Because it is in effect a confession. It is a confessional novel. The first person technique can give us a more direct relation with the experience that is described, than where the thing is siphoned through a third person, so-to-speak.

Now, Professor Bradley has already described the issue, the conflict, and the way in which it is resolved. I don't think I can add very much to the clarity with which he gave that to us. We obviously are trained in the same discipline, and we obviously speak the same language. The work, though to my mind, not one of the greatest novels ever written, is certainly a novel of great literary merit.

The Court: What novel do you think is the greatest novel on earth?

A. That's a very hard question to answer, your Honor.

The Court: I just want to draw some conclusions from [fol. 153] your testimony and determine what you consider the greatest novel.

A. Well, I refuse to——

The Court: One, two, two or three.

A. Two or three?

The Court: Yes.

A. Well, novels by Thomas Hardy, he's been mentioned. George Meredith. Many novels of Dickens; novels of Fielding; novels by Trollope; coming up to our own day, some of the novels of Hemingway, I think, are great, great novels. But again, each one of these must be judged not by some over-all standard, but by the success with which the artist has exploited the possibilities of his craft and given us his experience, distilled for us in this memorable form.

By Mr. Robbins:

Q. Professor Huntley, in these opinions of yours with respect to the literary value of this work and artistic impulses that it contains, or that are embodied throughout it, you have viewed the book as a whole?

A. Yes, I have.

Q. And you have considered it from its dominant themes and notes, is that right?

A. That is right.

Q. Would you say that the work—I gather you have already given us your opinion that it is certainly not the greatest novel in the world, would you say it is of substantial literary merit?

A. I would. It is of substantial literary merit. It is tested partially by our personal reaction to it. It's a hard book to read, it doesn't read easily at all. I had [fol. 154] found myself forcing myself to get through it, but it's a rewarding book to read because the satisfaction that you feel after it, in the way in which you see that the various pieces of what at one time was just a crossword puzzle falling into their place, that is the reward, so, memorability, I think, is part of the test. The characters

are memorable. Doctor—the Guatemalan Doctor, Doctor——

Q. Castelar?

A. Castelar, he's a memorable character. Madame Renee, I think I shall not forget for a long time. I would like to shift you slightly to the moral point of view.

The Court: How about Salesky?

A. Salesky?

The Court: The cab driver.

A. Yes, he's memorable. His name, too, is perhaps symbolic. Salesky, salacious. We were talking of Doctor Castelar. To my mind, I don't believe Doctor Bradley brought this out, but it is significant that two characters are introduced at that part of the novel, that is Doctor Castelar and Doctor Marie-Ornoux, one being the anticipation of the kind of solution that Mr. "X" must make, the other being the symbol of the kind of solution of the problem that Father Clément and the monks in the monastery have made. These two characters are introduced not haphazardly but at a time when Mr. "X" has *has* been [fol. 155] been very sick, coming out of his illness, he is within the monastery. He's had time to think about these things. And at this moment, the artist chooses—in relative—in real life these things don't always happen that way, but in art the design demands at this moment when the protagonist is coming out of his convalescence that he meet these two men who make a vivid impression on him. Doctor Castelar and Father Marie-Ornoux.

By Mr. Robbins:

Q. Professor Huntley, what do you deem to be in your analysis of the whole of this book, the dominant theme or dominant conflict that this artist portrays?

A. I think the putting together in the proper relationship these two parts of our nature. It's been an age old problem, as Professor Bradley told us. "The devil is outside of us, the devil is inside of us. We are part animal and part angel. One of the reasons why I had a particular interest in the novel, that teaching the Seventeenth Century, I see that this is the problem that John Dunn, Shakespeare, in fact, but John Dunn, Cranshaw, George Herbert

and Sir Thomas Brown, the great writers of the Seventeenth Century, addressed themselves to and revolved to the satisfaction: The placing in the proper or right relation these two worlds, the world of flesh and the world of the spirit, not merely to reject one, unless, of course, one has a peculiar vocation for that one thing and great honor is given to these monks, particularly to Father Clément and Father Marie-Ornoux, and those who can do that. But for the rest of us who are lay people to seek always [fol. 156] to find that relationship, which is not one merely of rejection, but one of redirection. May I say that this novel takes the form of discovery and reversal technically, that a man often times in a plot, a character in a plot, reverses himself. He's going in one direction, then he reverses himself and he goes in the other direction, and artists have discovered that one of the best ways to accomplish this is to allow a discovery." One is going the wrong way. Then he discovers that he is going the wrong way and that allows him to change. This is why, as Doctor Bradley said, and I partly concur with him, why we who teach literature often get into the field of religion or close to it.

In this sense, every great work of art is a religious document. To put it in religious terms, one would say one is converted. One is going in one direction and then he changes from ignorance to knowledge, he get a revelation and he changes his ways. As Doctor Bradley was describing in this novel then, the form which it takes and the parts must have been arranged in that form, therefore, they must be read according to that form. The form which it takes is that of a discovery, a gradual discovery, and the subsequent reversal. That's why the two parts are arranged in this way, the cloister within, the devil without, the devil outside. They are brought right together. The devil isn't far away, he's right outside the monastery walls. The conflict is made very clear.

Q. Towards the end of the work, is the conflict at all resolved in a literary fashion?

[fol. 157] A. Yes. "The conflict is resolved in a literary fashion in that scene which has already been described and already been gone into. The rather violent, rather fantas-

tic, possibly to some people's mind, blasphemous scene, where he is rejecting Madame Reneee, who becomes a temptress. She becomes the devil and it's not just lust. Lust is mixed up with all other things. It becomes hatred. It becomes bitterness. It becomes a lack of love. She rejects her own son, she spoils her son's marriage. As Doctor Bradley said, she's getting evil power over people. She's also using her charm. She is a woman of experience, she is old, yet she works this mother-temptation and the mistress-temptation all at the same time. So the final rejection, you see, is not merely one of thrusting aside lust, but is one of seeing that this is all part of a whole thing, that one should place it in its proper place. He does not finally, then, yield to that final horrible temptation. Fortunately, it's resolved in the moral, to my mind, in a religious way.

Q. In the course of your reading this book, you noted, did you not, some realistic or blunt expressions and scenes?

A. Yes, I did.

Q. Were you able to correlate or do you think that they were literally correlated to the themes and purposes of the work?

A. Yes, I do.

Q. In other words, have you had—viewed as a whole, you felt that these portions had their proper significance [fol. 158] to the themes and purposes in the entire dominant note of the book?

A. Yes. There I agree with Professor Bradley. The so-called sexual passages may make us believe that the only temptation is that of the lust, that's his weakest point. Father Clément keeps telling Mr. "X", "Why do you keep concentrating on sex? There are other things, there is pride, there is lack of love." This becomes a symbol, this is his weak point, and the devil attacks him at his weakest point. Those scenes, therefore, to my mind are artistically necessary in the resolution. First, the explanation of the conflict, and then the resolution of that conflict."

Q. Just, incidentally, before the advent of this litigation, you and I were not acquainted, is that right, Professor Huntley?

A. That is right. I never met you.

Q. You are not acquainted with the company Pocket Books, or with the Vice-President, Mr. Lewis?

A. Never met him before.

Q. Was there any arrangement made with respect to your compensation, with respect to this case?

A. Only that I would be compensated for my travel from Ann Arbor to Detroit, the expenses I incur while I am in Detroit and possibly, if the Court allows expert witness fees, I would be compensated in that way.

Q. Have you ever testified as a witness in this type of litigation before?

[fol. 159] A. No.

Mr. Robbins: I have no further questions.

Cross-examination.

By Mr. Kent:

Q. Now, Professor Huntley, you read the book this past June, did you not?

A. Yes.

Q. That was one month ago. Now, you did not read it in an analytical manner, I believe you stated previously You merely read it to derive some literary pleasure from it, is that right?

A. And to arrive at an opinion of it.

The Court: Wait, let's settle that right now. How did you happen to get the book?

A. I happened to get the book because Pocket Book publishers sent it to me.

By Mr. Kent:

Q. You knew at the time, did you, Professor Huntley, that you would then be asked to come into Court and render a literary opinion?

A. No, I was asked to read it with that in view. I did not know at the time that I would actually be called to witness.

Q. And did you, of course, tell the people from Pocket Books that your opinion of it was good?

[fol. 160] A. Yes, with the reservations that I've already made.

The Court: Just a minute. Did you make a written report to them?

A. No, I did not.

The Court: You did not?

A. No.

The Court: By letter or otherwise?

A. No, not by letter.

By Mr. Kent:

Q. Telephone call?

A. I told Mr. Robbins when he visited me in Ann Arbor, that I thought it was good.

The Court: In other words, you read it and somebody was to interview you later about your opinion?

A. That is right.

By Mr. Kent:

Q. You discussed with Mr. Robbins, of course, your literary opinion of this work?

A. Oh, yes.

Q. Of course, otherwise you would not be here, is that correct, sir?

A. That is right.

Mr. Robbins: I should be most derelict in my duty if I didn't discuss in advance.

The Court: I don't think there is any criticism.

Mr. Kent: I just think the record should show how Professor Huntley happened to be here.

The Court: I appreciate it.

[fol. 161] By Mr. Kent:

Q. In other words, this is some work that you are doing outside of your professional duties at the University of Michigan?

A. That is right, sir.

Q. Of course, school is over?

A. I am teaching in summer school, Mr. Kent.

Q. Oh, you are. Then, we will have to dispense with

your services as rapidly as we can, to permit you to get back.

Mr. Robbins: He also has a wife and children.

By Mr. Kent:

Q. How old are your children?

A. I have five children ranging in age from twenty-seven down to six.

Q. Well now, would you encourage your children to read this book?

The Court: I am not going to permit you to answer that question. This is a matter for the public. I am not going to allow any witness to be placed in that position, because there may be a lot of other things that enter into the matter, considering this book from the violation of this particular statute.

Mr. Kent: I heartily agree with you, your Honor.

The Court: I don't want to get any error in this record.

Mr. Kent: I withdraw the question.

Q. The opinion which you just gave us, Professor Huntley, and the reactions which you explained, were the actions which you, as an adult, educated individual, would receive and did receive from the reading of that book, is that correct?

[fol. 162] A. That is right, Mr. Kent. And the reactions which I tried to give to my students.

Q. Now, do you feel that young people would be capable of receiving that same reaction?

Mr. Robbins: If your Honor please, I hesitate to interject, but I think some definition of young people ought to be made. I could go from the year one to the year twenty, or even forty.

Mr. Kent: Of course, some of us might be young at heart. I refer, Professor Huntley, to those persons under the age of twenty-one.

A. I would recommend it to them? Is that the question?

Q. That wasn't the question, but as long as you have propounded that question I will ask you whether or not you would?

A. Oh yes, I would.

Q. The question that was pending, however, was would the young people, those persons under the age of twenty-one, be capable of receiving the same understanding from the book as you did?

Mr. Robbins: Again, your Honor, I'd like to object. Under twenty-one could be all the way from one month to twenty-one.

The Court: I think we can take it for granted that we've received very little criticism from the treatment a one month or one year old child would give to the book. However, I do think if you can be specific, it may help the record.

A. Yes. I think Mr. Kent is right in the assumption that lies behind his question, that there are different [fol. 163] skills in different readers, and that some people can misread.

Q. Yes. "Now, do you feel that this book, People's Exhibit 1, a copy of which you have in your hand, would still be of great literary value if all the pornographic details were omitted?

A. No. Given this conflict as we have attempted to analyze it, it's like a conflict between A and B and you are taking A away.

Q. You feel then that it is necessary in a good literary treatment of the work, to include every detail of the sex act as is depicted there, do you?

A. I believe firmly that it is part of the structure, the spirit and the tempo, the color of the whole work. Here again, may I add——

Q. Go ahead.

A. —that the intention of the author is called in question," and——

Q. Well, when you are getting to that, did you ever discuss this book with Mr. Griffin?

A. It is not necessary, I hope I have understood.

Q. Did you, yes or no?

A. I have discussed it very briefly with him, but long after I made my opinion.

Q. Let me ask you this: Did you ever discuss with Mr. Griffin, his intentions in the book?

A. No.

Q. All right then, you are not equipped to give or to make a statement to what his intentions were, are you, sir?

A. I am equipped to.

[fol. 164] Mr. Kent: At any rate, I understand the author is here and will be a witness.

The Court: Let's not get off the track again. You read the book. The only way you could get the author's intention is from the book?

A. Yes sir.

The Court: And you had that same—the same impression that you have now, before you met the author?

A. That is right, sir.

The Court: I think it's permissible for him to tell us. That's the way the public gathers what the author means, by reading the book.

A. I was going to say that I am equipped to read the author's intention by reading the book, perhaps better equipped than others because of my training.

Q. No question about that, Professor. That's your work and your business to interpret books, right?

A. That is right.

Q. Now, would you recommend such a book to be placed in the public libraries of the State of Michigan?

A. Yes, I would.

Q. Would you place it on any restricted list?

A. I would—don't know what criteria of evaluation is being used on the placing of a book on a restricted list.

The Court: No, the question is, you are an expert, called as an expert. Would you place this book on the restricted list?

[fol. 165] A. I would have to answer no, I wouldn't.

By Mr. Kent:

Q. In other words, you feel that it's available as good reading material for——

The Court: should be made available?

By Mr. Kent:

Q. Should be made available to all people, regardless of age?

A. Yes, I do.

Q. Regardless of understanding?

A. Well, I can't answer yes or no to these broad social questions.

The Court: I think, Professor, I think you certainly should tell us your reasons so I will ask you to give us the reasons for your opinion.

A. Well, my reason for,—are that——

The Court: First, why do you think it should be let, or what is in the book that warrants it to be left to open distribution in the library, making it accessible to anybody that wants it, including youngsters?

A. The seriousness of its intent, as made very clear, not clear just to experts but made fairly clear within the novel of this conflict which we all recognize and which I concur with Professor Bradley as describing one of the most important moral and religious conflicts which we, as humans, are faced with.

By Mr. Kent:

Q. You feel, therefore, that it should be placed on an unrestricted list?

A. Yes, I do.

Q. Despite the fact that young people may not be able to understand it?

[fol. 166] A. "Despite the fact that young people may not be able to understand it. Literature is not the only thing which they cannot understand. The avenues are multi-various."

Q. Now, Professor Huntley, do you feel that the phra*a*ses,—that the phraseology, that the descriptive vividness present in the work is obscene, immoral, lewd or lascivious?

A. No. I have reasons for that.

Q. All right, let's hear your reasons.

A. Here again, I think it's intent. "If a thing were put in order to excite lascivious desires, I would say that it is bad, shouldn't be in there, and one can tell whether or not

what the intent is, I think, by its non-functional character. I've tried to describe the characters and the scenes in this as being artistically functional within a whole. They are not to be perverted. It is obviously true that some people can pervert these scenes to their improper ends. Their ends are inartistic ends, but can also pervert almost anything." I think psychologists of sex tell us that a shoe can be perverted. In other words, it depends upon the individual. It's not the thing in itself, to my mind, that is evil. That almost has a moral neutrality, it's the individual who can pervert it or use it in its proper ends.

By Mr. Kent:

Q. Separate and distinct from the intent, Professor Huntley, would you say that many of the passages are suggestive, insofar as they stimulate thoughts of an immoral and sexual nature?

[fol. 167] A. Your qualification is apart from the intention?

Q. That is right. In other words, taken alone.

"A. Taken alone. I find it difficult to say yes or no to that question. I find it impossible to answer it without an analogy. Let's say, take a statue: then let's concentrate just on the navel. The human umbilicus is not a beautiful object, but just take that. Is this apart from its intention, apart from the whole in which we find it, is this beautiful? I would say no.

Q. In other words, Professor, tell me this, if I am correct. Is it your opinion that the work taken as a whole is a literary work, but that if you should select the excerpts which some people feel are obscene, lewd, lascivious and immoral, that in and of themselves, separate and distinct from the work as a whole, they could and should be classed in the lewd, lascivious and immoral classification?

The Court: Or any of them?

A. Well, I would, I think I would have to grant that, Mr. Kent, though I call it a perversion."

Q. You grant that, though?

A. Yes, I'd have to grant that.

Q. In the literary sense, however, you are qualifying

that to say that's a perversion, did I understand you correctly?

A. No, you did not.

Q. I mean, you said that would be—you meant, of course, it would be a perversion of the work?

[fol. 168] A. Yes, it would be a perversion on the part of the reader to make such selections as I think it would be a perversion on the part of a person looking at a statue, simply to concentrate on the navel and nothing else, and then say this is not beautiful.

Q. What are the age limitations of your students, Professor Huntley?

A. I have students from the age of eighteen up to Ph.D. students.

Q. You are not acquainted then with the reading habits of ten year olds to eighteen year olds, are you?

A. Well, I am acquainted with them, I don't meet them every day.

Q. Is it true that some of these young people will go into book stores, as an expert, of course, you can give us an opinion, if you know; just tell me if you know or do not know this to be true, that young people will go into book stores or drug stores and thumb through a book before making a selection, picking out portions thereof, which are attracted to their attention?

Mr. Robbins: If your Honor please, quite apart from whether he knows, I suggest the question is most irrelevant and I object to it.

Mr. Kent: I think it's relevant insofar as this. We are concerned here with the reading habits of young people.

The Court: No, we are concerned with whether this book is in violation of the Statute, whether the Statute is constitutional. Now, I think that most of us realize that a lot depends on the individual that reads or sees the book. Any of us that have grown up in the City, cosmopolitan [fol. 169] neighborhood, been anywhere near book stores, or places where the socalled magazines are on display, we are a little bit more strict in Michigan than in some of the States. But you will find not only youngsters, you will find grown-ups that go there just to look at the pictures on the outside. Or, you will find people thumbing through.

In fact, I know of a certain place in a certain city where they hire an extra man on Saturday. It happens to be a town where there are a lot of young single men and they hire an extra man there to watch over these books, because they disappear. We can't correct all the morals by asking the Professor questions.

Mr. Kent: Nor do we intend to.

The Court: Nor on that line, so let's stick to the book.

Mr. Kent: All right.

The Court: Those of us that were teachers, know that sometimes the dictionaries, the dark parts been used, and you will find some lewd word there that is suggestive of sex or sensuality. So go ahead. We're all men of the world.

By Mr. Kent:

Q. Just a couple of more questions, Professor Huntley. Did you feel, in the reading of "The Devil Rides Outside," that the work of any portions thereof would tend to incite minors to the commission of any immoral acts?

A. I don't know who the minors are. I have minor children. It wouldn't incite them.

[fol. 170] Q. Well, you are fortunate. You've trained them well.

A. Is this general, is this all minors?

Q. Yes.

A. Well then, I must answer no, unqualifiedly.

Q. You see, for clarification, Professor——

The Court: The Professor said it wouldn't incite all minors, that is all he said. Would it incite some?

A. I am sure it would incite some.

By Mr. Kent:

Q. You are excluded.

A. Well, and many others.

The Court: Wait, I don't want you to go into anything about any family, even though he brought it out himself. I am not going to allow error to creep into this record. I am not interested in their families, except to know that they are family men and that they have children. That is important. But as to what they feel about each one

of their children, I don't want you to go into that under any circumstances.

Mr. Kent: All right.

By Mr. Kent:

Q. Do you feel, Professor Huntley, that the book contains matters that would tend to the corruption of the morals of youth?

A. Well, I feel that I am being trapped by you, Mr. Kent.

The Court: He is using the language of the Statute, sir.

Mr. Kent: I am quoting almost directly from the Statute as it exists in Michigan.

A. Must be some exceptions.

[fol. 171] Mr. Robbins: I would like counsel to preface his question as to whether or not he has any opinion on this subject at all.

The Court: Wait, we are not going back to that. It's gone way past that. If you are objecting, if your objection had been made half an hour ago, it might have had value, but certainly not now.

By Mr. Kent:

Q. Are you able to answer the question?

A. May I have the question once more?

(Last question read.)

The Court: That could be answered yes or, I don't know.

A. Well, I really don't know.

Mr. Kent: All right, thank you, Professor. I have no further questions, your Honor.

Mr. Robbins: No further questions.

The Court: I think the questions I asked Professor Bradley you would answer in the same way, from what you have testified here, is that correct?

A. Yes.

The Court: Very well. Step down. Thank you.

(Witness excused.)

The Court: How long will the next witness take?

Mr. Robbins: The next witness is the author. My examination should be concluded within the time you set forth. I can't guarantee the cross, but I would think that [fol. 172] by quarter of 1, I should be concluded.

The Court: That's only twenty-five minutes.

Mr. Kent: Why don't you do this?

The Court: That clock, I understand, is four or five minutes slow. After all, it is twenty-six after now.

Mr. Robbins: Well then, I can take up some other small matter.

The Court: Very well.

Mr. Robbins: May counsel for the Prosecutor and myself approach the bench?

Mr. Kent: Counsel and I have discussed this matter. I think it should be on record.

Mr. Robbins: Well, the conclusions.

(Off the record discussion.)

Mr. Robbins: Is there anything else—may I have three minutes to consult with my co-counsel a second on this?

The Court: If that clock is slow, instead of three minutes consulting with your co-counsel, what we will do is adjourn until to-morrow morning at 9 o'clock. Now, you understand my position as far as that paper is concerned?

Mr. Robbins: Yes, sir.

The Court: Without putting it on the record, if it's presented in the proper way, why that's a different story.

Mr. Robbins: All right. Thank you, your Honor.

The Court: Ladies and Gentlemen, Court is adjourned until to-morrow at 9 o'clock.

(Court adjourned until July 9, 1954, at 9:00 a. m.).

[fol. 173] July 9, 1954.

9:00 o'clock A. M.

The Court: All right, Gentlemen.

Mr. Robbins: If your Honor ready? I should like to call the author, John Howard Griffin.

JOHN HOWARD GRIFFIN, sworn by the Clerk on behalf of the Defendant, was examined and testified as follows:

Mr. Robbins: With your Honor's indulgence, may I explain to him about the voices that are coming?

Direct examination.

By Mr. Robbins:

Q. Mr. Griffin, your full name is John Howard Griffin?
A. That is correct.
Q. Now, Mr. Griffin, voices coming to your immediate right will be the voice of the Court. I am in front of you by about twelve, fifteen feet, and the stenographer is immediately in front of you. Where do you live, Mr. Griffin?
A. Mansfield, Texas.
Q. How long have you lived there?
A. I've lived there seven years.
Q. And are you the author of the work "The Devil Rides Outside," which is People's Exhibit 1 in this case?
A. Yes.
[fol. 174] Q. This is the third edition of this book, is that correct?
A. I don't know exactly what you mean by that.
Q. I mean there was a hard cover edition published by Smiths in Texas, and there was an English edition, and then this edition of "The Devil Rides Outside"?
A. It's the fourth edition, if you want to go by that. There is an edition published in France, also.
Q. This is the first novel you ever wrote?
A. Yes.
Q. Where were you born?
A. I was born in Dallas, Texas.
Q. What year?
A. 1920.
Q. Where was your first schooling?
A. My first schooling was in Fort Worth, Texas.
Q. Did you continue your elementary schooling in this country?
A. I went through what is called grade school and Junior High School here.
Q. Thereafter, where did you go to school?

A. I went to high school and college, first at high school at the——

Q. Say that more slowly.

A. Lycee Descartes, it's a boys school in Tours, France.

Q. How long did you stay there?

A. In the Lycee?

Q. Yes.

A. I stayed there approximately three years.

Q. And after that, where did you go?

[fol. 175] A. Simultaneous to that, if you want to get this thing straight, in France there is a system whereby you can take multiple education, that's the reason I went there. After my first year in the Lycée in France, in addition to going on with high school work, I was allowed to go to the University to begin taking pre-medicine.

Q. What University was that?

A. That was the School of Medicine of Tours.

Q. That is part of the University of Paris?

A. Yes.

Q. So, at the time you were in high school, you tell us were you also taking a premedical course at the University of Paris Medical School which is in Tours?

A. That is a branch of the University of Paris.

Q. Now, about what year does this come to, when you started your premedical studies?

A. 1937, when I started my premedical studies.

Q. Were you working also at the same time, or supporting yourself in any way?

A. No. I was allowed to go to school on a very generous and strange arrangement. I was allowed to go there, the French schools allowed me to take any courses I wanted with no—without having to pay any fee or tuition. All I had to pay was my room and board, which is very cheap in France.

Q. At the outbreak of the World War, with the involvement of France therein, where were you?

A. I was in Tours.

[fol. 176] Q. What part, what educational stage were you at that time?

A. I was in the third year medical school. I was going into third year medical school. I was doing research in a

type of therapy. My field was going to be psychiatry. The system is somewhat, in France, different from what it is in America. You do extern work every year in France. I was working with a doctor in charge of the insane asylum of Tours, doing research work as an extern, in addition to my medical studies.

Q. The advent of the World War, which is the Labor Day weekend of 1939, did that bring some changes in your life, your day by day existence?

A. Yes, very much so.

Q. Tell us the changes that occurred.

A. The changes that occurred were, we were living in the village of Tours, town of Tours. I was living there, I should say, because I was living alone. Immediately after the Declaration of War on September 3rd, the Government mobilized every available man in France, I guess. Certainly in Tours. There was a period of panic, there was a period when I was ordered back to America for my own safety. I was very grateful to France for——

Q. Aside from that.

A. Yes.

Q. Educationally, as far as your educational development at that time, your educational studies at that time, what effect did the outbreak of the war have on that?

[fol. 177] A. It altered them.

Q. What alterations occurred?

A. The schooling became very sporadic.

The Court: Counsel, I don't mind listening to the—by the way, Mr. Griffin—by this time I take it you've already identified my voice, is that right?

A. Yes, sir.

The Court: By listening?

A. Yes, sir.

The Court: You know the Prosecutor's voice?

A. Yes.

The Court: So you probably will have no trouble identifying each of us?

A. That is correct.

The Court: I think inasmuch as the scene of this novel is laid in France, rather than try to curtail the author's speaking of being grateful to France for this, that and the other, I prefer to listen to the whole thing.

A. It was only one sentence.

The Court: I know it might be only one sentence, but I still want to get your feeling.

Mr. Roberts: I thought perhaps we might go a little far afield.

The Court: I appreciate your concern and ordinarily it might be correct. But I feel in this case——

Mr. Robbins: I am very happy to comply.

[fol. 178] Mr. Kent: Does your Honor mean in reference to the background as to what caused Mr. Griffin to write the book, and so forth?

The Court: It may be important in my decision as to the sincerity of purpose and so forth, and so on.

Mr. Kent: Yes. But, well, I have no objection to that portion, may it please the Court, but when it comes into the book, I am going to ask Mr. Griffin's indulgence so that I can make an objection to you.

The Court: Very well.

By Mr. Robbins:

Q. Mr. Griffin, will you tell us with some completeness about your life in France?

A. At the outbreak of the war, as I say, every one was mobilized. Very few men left who were not subject to conscription. Very few. As an American citizen, I was one of them. The system in France was to take first things first, which meant that the few of us who were left had to do—live a very strange life for a certain amount of time. I, for example, when they conscripted the doctor, a very famous doctor in charge of the insane asylum, of Tours, they conscripted all of the male attendants. I was left in charge of the women's sector of the asylum, with eight nuns to help me. They took every bit of our supplies. I was also taken into what later became the underground.

In other words, I became a member of a liaison team to evacuate qualified refugees from Tours to the Port of [fol. 179] St. Jose. My principal activities were those. I was also in charge of a First Aid Station. I was also in charge of lecturing on poison gasses, but the schooling which started out that year, that's what you started out

to ask me about, more or less played out, obviously. The point that I think should be made here as being relevant to this book is that in my work with a certain type of insanity which exists in France, I was trying with Doctor Fromonte to evolve a system whereby we could reach people who had gone beyond the point of speaking or understanding speech, by using sound and sound intervals, as a therapy, playing directly on their nervous system. That led me, as the Doctor told me, he said "You take care of the music and together we will take care of the science." That led me to study a great deal of the mechanics of music. We knew by experiment the type of music that had a pronounced therapeutic value on the nervous system of this type of patient. We could not explain without studying harmony and counterpoint, and so on, whether this was so. This led me quite directly into the field of rigore and chant, and in my—the needs of my medical thesis demanded that I study Gregorian chant. That is pretty much where I stopped when the war came.

By Mr. Robbins:

Q. There came a time during the hostilities, after the United States, I suppose, entered the war, that you were brought back to the United States?

[fol. 180] A. I wouldn't say I was brought back, I came back.

Q. You were ordered out——

A. I was ordered out by the French Security.

Q. When you came back to the United States, where did you live?

A. May I say just—I was ordered out.

Q. Give me your own words, I don't like to chop up your story.

A. I was ordered out by the French Security for my own good. I was discovered in my work, attempting to get a Supreme Court Justice from Vienna, from France to England, and France was on the verge of falling. For my own safety, they felt that I should, by all means, leave. I was no longer of any service to France, but I left under no stigma whatsoever.

Q. I appreciate that, but then you came to the United States, is that correct?

A. Yes.

Q. Where did you live in the United States?

A. I lived in a great many places, because I was on the run from what we were frightened was the German Bund.

Q. The Bund, is that right?

A. Yes, the Bund, which was very active in America at that time. I lived primarily in Texas, I lived in Mexico for a short while, and the largest part of my time was spent in Texas.

Q. Did there come a time—were you doing any educational work at that time, of any sort?

A. I was doing research.

Q. In what field?

[fol. 181] A. In the field of musicology, as it related to sound therapy.

Q. Then there came a time when you entered the United States Armed Forces?

A. Yes.

Q. When was that?

A. That was about two months after America declared war in 1942.

Q. In what capacity did you enter?

A. I entered as a language specialist, I shouldn't say I entered, I should say I was classified as a specialist, as a musician.

Q. In what?

A. The Army Air Force.

Q. Did you enter as a private?

A. I entered as a private, yes.

Q. There came a time when you got overseas duty?

A. Yes.

Q. When did you go overseas?

A. I went overseas eleven months after I entered. I don't know the——

Q. Where did you go?

A. I went to the Pacific area.

Q. Where abouts, particularly?

A. I went all over the Pacific area, from Honolulu to the Philippines.

Q. What were your functions?

A. Part of the time I was on combat as a radar specialist and part of the time I was on the ground as a language specialist.

[fol. 182] Q. Until that time you had the complete use of your eyes and your legs and other portions of your Body?

A. Yes.

Q. There came a time—withdraw that. How long were you on duty in the Pacific area?

A. Thirty-nine months.

Q. I didn't hear you.

A. Thirty-nine months, I believe it is. I may be wrong two or three weeks, one way or the other.

Q. When did you come out of the Pacific area?

A. I came out of the Pacific area—I will tell you, I am not too clear. I came out of there sometime at the very end of 1945.

Q. That is, at the conclusion of the war?

A. Oh, after the war was over, yes.

Q. The war had concluded?

A. Yes.

Q. During the course of your thirty-nine months in the Pacific, there came a time when you received severe injuries, is that right?

A. Yes.

Q. And you've lost the sight of your eyes?

A. Yes.

Q. You also have a condition effecting your legs, is that right?

A. Yes, sir.

Q. These were injuries received in the course of batt-e or bombings?

A. Yes.

Q. Incidentally——

A. One was not. The spinal injury is the result of a disease I cont-acted.

[fol. 183] Q. And the blindness is the result of the bombings?

A. Yes.

Q. Were you awarded the Congressional Medal of Honor?

A. No.

Q. Were you decorated for your battle services, I should say?

A. Yes.

Q. When you were returned to this country, you were disabled, as you are now, is that correct?

A. Not to that extent. I was what is known as legally blind. In other words, I had lost ninety-five per cent of my sight, but not all of it, and I was—had this condition of the spinal cord which is——

Q. What did you do when you were released from the United States Army, what was your occupation, what did you set about doing?

A. I set about immediately going back and trying to finish my education.

Q. You went back to where?

A. To France.

Q. Where did you go?

A. I went back to, to resume my studies with Doctor Fromonte at the medical school. We very shortly determined that I would not retain what remained of my vision. It seemed impossible for me to continue in the field of medicine. It might not have been, but it seemed so to me, and so, since I had done a great of work in musicology, I switched to musicology and I studied in Paris at Fontainebleau, and later with the Benedictines in a number [fol. 184] of spots in Europe, doing advanced research.

Q. You were then principally concerned with musicology, is that right?

A. Yes.

Q. Now, what was your religion in the early days?

A. I started out as an Episcopalian, a member of a very devout family. I very early became fascinated with science. That's what took me to France for school. I went through a stage of complete and utter agnosticism, thinking that the answer to the universe could be found in science.

Q. What period?

A. The agnosticism, as very often is, a period of adolescence around seventeen and possibly part of the eighteenth year. It was destroyed completely by the cataclysm of the war in France.

Q. And after the agnosticism, I will put it this way, while you were on service in the Pacific, were you an agnostic at that time?

A. Oh, no.

Q. You had already come back to religion?

A. Oh, yes. I had not accepted any religion, but I——

Q. But you had discarded agonisticism?

A. I had very profound belief in God.

Q. Now, coming back to France after your war service, had you, this was around the end of '45 and the beginning of 1946, is that right.

[fol. 185] A. Yes. In '46 and '47.

Q. Had you embraced any faith at that time?

A. I had not embraced it mechanically. I certainly embraced it in my own heart, yes.

Q. Now, you had occasion when you came back to France, and I suppose even in your early days, to travel through France?

A. Yes.

Q. You traveled through the South, have you been in the South of France?

A. Not a great deal.

Q. Have you been in the central portions of France?

A. Quite a lot.

Q. You say you were familiar with Benedictine monasteries?

A. Yes.

Q. With what Benedictine?

A. The Benedictines Au de La Seurs, the Benedictines of Lycee.

Q. And your familiarity was to the extent that you had been inside the monasteries and had seen the way in which the monks lived and the routines of their life?

A. That is correct.

Q. The devotional prayers and their studies of music?

A. That is right. Also with many other monastic orders, the Dominicans and the Trappists also, and so forth.

Q. And you continued—well, I will withdraw that question. How long did you stay in France on this second——

A. Second visit in two years.

Q. So that you returned to this country some time in 1948?

[fol. 186] A. No, 1947.

Q. 1947?

A. I was there in '46 and most of '47.

Q. Have you ever been back there since 1947?

A. No, I haven't.

Q. Have you been out of this country since 1947?

A. I have been in Canada and in Mexico.

Q. In 1947, did you find a permanent place to live?

A. Yes.

Q. Where was that?

A. On a little farm in Mansfield, Texas, that was the first time.

Q. What kind of a farm is that?

A. It's a live stock farm, I raise live stock there.

Q. You, yourself, raise live stock?

A. Yes. I also do a small amount of gardening, but mostly it's livestock.

Q. Are you married?

A. Yes.

Q. Any children?

A. I have one for November.

Q. Pardon?

A. I am expecting one in November.

Q. You are expecting one in November; I see.

Q. Have you written any books?

A. Yes.

Q. What kind of books?

[fol. 187] A. I have written books——

Q. I am saying aside from the book in question. I meant any other books is what I mean.

A. I have written books on technical subjects, primarily on musicological subjects.

Q. Have they been in the French language?

A. Yes.

Q. Have you written any other books in the English language?

A. Yes.

Q. What subjects are they on?

A. It's very difficult for me to answer that. I have

written, I should say, I have written about five books in addition to the one in question. They are novels except for one, which is half fiction and half text. It's a study of the psychology of blindness. I used fiction to illustrate the text.

Q. Now, besides farming in this country, did you have any other outlet or interest or work of any other sort?

A. Besides farming and writing?

Q. Yes.

A. I lecture a good deal.

Q. What kind of lecturing is that?

A. I lecture on a great many different subjects. I lecture on writing, I lecture on musicology, I lecture on the psychology of the blind—of the handicapped, regardless of whether it's blindness, although blindness is my field. I lecture on anthropology, I lecture on agricultural methods, on experimental agriculture.

[fol. 188] Q. You lectured in Detroit?

A. Yes, I lectured in Detroit this year.

Q. That was this year, is that right?

A. In February, I believe.

Q. Where was that?

A. That was at the Fine Arts auditorium, or something like that, Music Hall auditorium, or something like that.

Q. Was it in the Rackham Building?

A. I don't know, to tell you the truth.

Q. You lectured in Windsor as well.

A. I lectured many times in Windsor, yes.

Q. Now, as you have established already that this book "The Devil Rides Outside" is your first and only novel?

A. No, sir, we have established that it is my first published novel.

Q. I beg your pardon, first published novel.

A. Yes.

Q. There are several other novels that have been written but not published?

A. That is right.

Q. They were just recently submitted?

A. They've been accepted but you don't publish except at certain intervals, you know.

Q. I see. Now, there came a time during your period in the Pacific——

A. Yes.

[fol. 189] Q. —when you went through certain rather climatic time with regard to your own faith, is that right? This is a bit difficult for me to phrase and perhaps you would like to put it in your own words. I am speaking of some religious experience that you may have had in the Pacific, or which may have antedated that, or post-dated that. Can you address yourself to that topic?

A. I understand your question very, very well. I was trying to think how I would answer it. I wouldn't say there was particularly a time when I did. I would say that there was a time in this certain area of battle, under constant combat, under almost twenty-fours a day bombardment over a period of quite a few months, when everybody there, no matter what his background, no matter what, was pretty much developed along two ways. He either went almost insane with fear and fatigue, or he developed an attitude of not caring what happened, of being absolutely convinced that he would never come out of anyway, and those were both very bad attitudes. The third attitude was an attitude of association. We had an old Australian Catholic Chaplain who celebrated Mass in the evening, no matter whatever happened. He also went on combat missions with us. He was all over the place, and the example of other men was a mutually sustaining thing. Men are very superior under those conditions, no matter what they are otherwise, but the example of this priest and the celebration of the Mass, no matter what your faith happened to be, it developed toward the evening, we looked forward to that as about the only respite from fear. We [fol. 190] went every day, I shouldn't say we weren't even prompted by a religious motivation. We went for something that had developed as a very desperate longing, not only me, but any one who goes through that tremendously purifying process of continual constant fear, of continual constant death. The intangibles that come from that, I think, saved a great many of us in a very quiet way, because this priest was a very quiet and a very simple, and a very humble man. They saved us, I think, really from tremendous damage. With my background in psychotherapy, in psychiatry, I was perhaps able to analyze that a little bit more.

But that does not mean that I felt it any more than all of my comrades in arms. The instance of what we call combat fatigue in that area was tremendous, was very, very high. The thing that kept it from being much higher, I felt, was something that came from that thatched-roof hut where we could go and where we could be alone, even though there was always a tremendous crowd there at every Mass. I think it saved us from——

Q. Now, Mr. Griffin, these feelings that were engendered at that time were carried with you when you returned to France, is that right?

A. Yes, I should say that the example, the practical example of what that could do has never ceased to influence me.

Q. There came a time in France when you felt some pull towards the Roman Catholic faith, is that correct, when you returned to France?

[fol. 191] A. Yes.

Q. And did you eventually become a Roman Catholic?

A. Yes.

Q. When did you first—when were you first, shall we say, morally inclined to that view?

A. I would say that I almost couldn't precise it. I would say that it would be some time in about late 1939, early 1940, when I as a nineteen year old boy was subjected to seeing a great many women in straight jackets, and of having to find something to feed them, and of having to carry them into a cellar every time an air raid came in Tours.

Q. I beg your pardon, go ahead.

A. And having the nuns, having the example of the nuns to help me. I was the only man in that pretty horrifying atmosphere.

Q. When did you actually embrace the faith?

A. I actually went through the mechanics of embracing the faith in 1951.

Q. Are you a member of a particular order?

A. I have subsequently become a member of the Carmelite order.

Q. Now, this book, People's Exhibit 1 "The Devil Rides Outside," what period in your life was the writing of this, did the writing of this book take place?

A. The writing of that book occurred in 1949.

Q. Recently, after you returned from the second trip to France?

A. I returned in '47,—it was——

Q. Two years after?

[fol. 192] A. Approximately a year and a half, two years after.

Q. How long did it take you to write it?

A. Took me seven weeks to write the first draft and about three months to write the second. All told, all the drafts, I suppose it took me about seven or eight months.

Q. Now, you, a good deal—withdraw the question. Are there portions of this book, People's Exhibit 1, which reflect your own experiences in life?

A. That's a very difficult thing. There are certain portions that reflect my own experiences in life. I'd like to say that this book, and I can say this with all honesty, is not autobiographical. When "I actually went through some of the experiences that I have my character do, such as going to monasteries, I went myself, in reality, as a man with the most profound sympathy. I am not the character of that book. In order to make my thesis, I had to have him completely unsympathetic to that system, so that, certainly, there are many things there, there are many things there that come from the third century, from the rule of St. Benedict. I wrote them as they were reflected directly on my life. I used the first person."

It's an experience that I know aesthetically, even if the scenes are fictitious. I've analyzed too many people not to know that.

Q. Now, what about the characters with particular reference to the characters. Are some of the characters in this work, characters that you have met, not by name, of [fol. 193] course?

A. I can give you a very good answer to that. I have met most of those characters many hundreds of times. I shouldn't say that there are any except—offhand, I can only think of one minor character that I actually had a real person in mind when I wrote.

Q. Who was that?

A. That was Brother Divette, the lay brother in the

monastery. I think I called—I think I called him Brother Blassett in the book, I believe.

Q. Now, you've spoken of your familiarity with the French scenes and the characters in this book, and some of the incidents?

A. Yes.

Q. Are there any particular—I will withdraw that. You had a particular purpose in mind in writing this book?

A. Yes.

Mr. Kent: Excuse me, Mr. Griffing. May it please the Court, this is the point at which I wish to state my objection on the record.

The Court: Very well.

Mr. Kent: The matter of the author's purpose is *is* entirely irrelevant to the issue. There are only two issues involved in this proceeding, two questions, rather, before the Court. Question No. 1, is the book obscene within the meaning of the obscenity statute, and, secondly, was it sold. Now, however noteworthy and aesthetic Mr. Griffin's purposes may have been, they are entirely irrelevant to those issues.

[fol. 194] The Court: We've listened to the background, we've listened to Mr. Griffin's early life, his interests. There may be some theory that he wants to evolve, something showing that in accordance with counsel's theory that by way of contrast, some of these were necessary to have in the book. Now, I am not going to exclude anything along that line. So, counsel may proceed.

Mr. Robbins: There is an unanswered question.

(Last question read.)

By Mr. Robbins:

Q. Will you give us what that particular purpose was?

A. Yes; "I did not write this book as primarily something of itself to be noteworthy and aesthetic, as has been suggested. I wrote this book because I had, even while very young, had a pretty tremendous contact with the dregs of humanity and by the dregs, I mean the dregs of people there through misfortune, people in insane asylums, people going through the really horrifying experience for

a young person, of war. I had also seen, observed in some instances, been a part of a very brilliant, a very polished, a very cynical philosophy that evolves, that evolved in young America, that evolved in young France, that evolved a great many places, where the systematic destruction of innocence was considered legitimate. It was not only considered legitimate, it was almost a prerequisite, as to social acceptance and to intellectual freedom. I have seen a great many people, young boys, young girls, older people, who come for psychotherapeutic counseling. I have [fol. 195] invariably found that one of the gravest problems that they have is the idea that I have sunk too low. I can never come back. They have admired these things which destroy innocence. I have also seen the tremendous difficulty of undoing that kind of harm. To me, it's like a person who as a youngster starts out liking grape juice and who as he grows older and smarter becomes such a connoisseur of the more rarified wines, that he can never really go back to bearing the taste of grape juice.

I think that, mixed with the type of over-education was a tremendous problem in modern day civilization. I said how can you treat this? Because many of the evils that are causing, I don't know too much about what fills the jails, but I do know what fills the insane asylums. Many of those conflicts result from a delusion that you must accept certain precepts. They are rather sophisticated precepts as a rule, even among the commonest people, and much of this is under the guise of piety, of christianity. It's a very unrealistic thing, it's a very sincere thing. It cannot help but cause what psychologists call an area of dissilience, because when you have a conflict of that nature, wherein the conscience of the individual feels that there is something evil about something about which society has seen as good, and which is given the name of christianity, you have a very dangerous psychological situation. So, I decided to attemot to illustrate this problem illustrating a mediaeval [fol. 196] concept of christianity, which in reality, harks back to the philosophy of the third and fourth centuries as based on the principal rule of St. Benedict. It would be obvious, it would obviously do no good unless I could place the reader in contact with that. Otherwise, it is a study.

No one would be particularly interested in reading such a study, except scholars, and scholars don't usually have this problem on such a vast scale. So, I decided to put a contemporary man face to face with the mediaeval concept of christianity, which is a fresh concept, which is a concept which is not allowed,—which has not allowed compromise to enter. This still was not enough. We have to have in the balance what was the choice that a human being, no matter what his religion, whether he be a christian or what else, must inevitably make. That choice is between a balance or this constant refinement that leads you away from the healthful taste of grape juice. I wanted to make the reader the principal character of my story. I wanted to do this for many reasons, because I wanted the reader to see, to experience on paper, what he has seen and experienced, whether he has allowed it to come to his conscious fore or not. The idea that I had was not to edify college professors, doctors or educators. It was to show a great many poor people, and a great many relatively ignorant people, ignorant, I say, in the understanding of themselves, not necessarily from the point of view of books. I wanted [fol. 197] to show them the truth of the faith, that the hope of man, of all men, if you can be honest about what is obviously and transparently the hope of all men, is not toward a neutral middle sex of complacency or boredom, or the seeking of pleasure of itself. It was sanctity. Its sanctity is the only happiness that the common ordinary man and woman and child can know out of their life, that this life makes very little sense without that.

I wanted to show that nothing stands so much in the way of sanctity as pride, that nothing nourished sanctity so much as charity. Pride and charity were my two themes in this novel. I have depicted with very great realism, every possible aspect of life that I know. I have depicted it under the guise of compassion. I had a very, very marvelous model of precedent for that, because Christ himself shows imperfect people as his disciples. He chose very imperfect people as his disciples, and yet today, the christian has a tendency to be virtuous only through the stripping away of sin, not through the positive virtues. I portrayed a woman who might have been compared to the

adultress in holy red. I portrayed her as potentially a saint. There could be nothing less blasphemous than that. I portrayed her as being potentially a saint, and the difference between her sanctity and the other extreme to which she might have gone, as depending entirely on the grace of God and on her love of God." I don't know if this is [fol. 198] fair, but I can say that I have received many letters from——

Q. Now, Mr. Griffin, we will avoid the question of the letters you have received.

The Court: Do you at all feel, feel at all uncomfortable?

A. No, sir, I am all right.

The Court: Let us know if you do, because of your back or anything.

A. Thank you, sir. "All right, I will say that every character in my book had to have many purposes. Otherwise, the book would have been 40,000 pages long. I was faced then with a great deal of frankness. I was faced with the kind of objects that I felt I had a tremendous responsibility on every level to face. I must confess I faced it as some may say, badly, as others may say, well. I faced it as I could think, on a faith that if you can be truthful, if you can absorb some tremendous truth, if you can portray man as many men dream of being, man, the object of animal pleasure, and I will illustrate the unutterable emptiness that comes from that single goal in life as weighed in the balance, to give a man a choice, that it is then somehow, if you can make that homogenous, if you can make every character serve many functions, if you can make people in communities not do what the people in that community did, to Madame Vincent, if you can make them have compassion on the weakness of men, you can hope for [fol. 199] a cure for themselves, you can hope that words like sanctity will not sound like a phenomenal presumption in the mouth of an ordinary man. I choose this form not as I say for college professors, not for educators, not for judges, I choose it because with those people there is plenty of material written in their philosophic treatises. I chose it for the poor devil, I have gone so far, I am a person of such unutterable imperfection, there is no hope for me, I might as well go on as I am. My book is a thesis for

struggling toward a goal, for struggling toward a goal no matter what happens. That is basically what I was after. I might say that I put my eggs in the basket that are, that loftiness of ideal, that realism. I was perhaps too trained in my science. But those things can never do harm any more than anything which God created, that there must be distinctions made between temptation and sin. I substituted all sins. I could have chosen any sin in the book. There would have been a parallel. The sin of pride is the characterization of Madame Renee. She is the most hideous character of the book. I could have chosen any other thing except the sins against purity, and I could have written the same drama and the same conflict into them, because they are all essentially the same. I chose this particular aspect as a symbol of sin, as a positive act offensive to God, and therefore, destructive of the practicants on peace and happiness. That, I think, is why I wrote that book."

Q. Mr. Griffin, is there a particular passage in this book that gives your point of view in a distilled form?

[fol. 200] A. Yes, I think there are a number. I think the twentieth——

Q. I have in mind particularly the 20th of December.

A. I believe that is correct.

Q. I know that you are unable to read it.

A. A sort of summing up.

Q. And I am not histrionically inclined.

The Court: You are not, Professor Bradley.

Mr. Robbins: I am most sorry he's gone back, but I am referring in People's Exhibit 1 to page 196, the second complete paragraph, starting with "And over and above, we are offered the freedom of choice."

By Mr. Robbins:

Q. Is that the paragraph you might have in mind?

A. That is right, yes.

Q. I merely note for the record, because your Honor can note this just as well as reading it again. But it is the second complete paragraph on page 196 of People's Exhibit 1.

The Court: Page 196?

Mr. Robbins: Page 196. The passage starts there to almost through 197, until the paragraph starting with the word "Light" on 197.

A. Could I make one——

By Mr. Robbins:

Q. Could you—read part of this to make——

A. Could I make one statement? "I'd like to say this, I'd like to say that if this is a book for the educated man, then I have only partially succeeded. It was not written for the educated man. It was written very, very much for the so-called man of middle, medium or lesser education." [fol. 201] Q. I think you have made that point. I want to draw your attention particularly, is there any particular significance to the character, Doctor Castelar, in this work?

A. Yes.

Q. In accordance with the purposes that you gave us?

A. That is right.

Q. Can you give us that significance?

A. The character of Doctor Castelar represents to me pretty much the potentiality. It represents the idea that a theological variety, and a psychological variety, that a person's potential to sanctity is in direct proportion for his potential to sin. Bishop Sheen says that a man who is about three inches good can only be about three inches bad. The great saints have been potentially the great sinners. Castelar illustrates that enormous gamut. In him you have it. You have a relationship to evil that is very, very great, but you have there a man that would be a criminal. He is misdirected. A man of enormous energy. Any reader of this book could see what would happen to that man without the grace of God.

Q. The description, was there that particular lesson?

A. Very, very definitely so.

Q. You, of course, are familiar with the fact that there are episodes in your book and expressions of language as well, which are on the realistic and on the blunt, and often, perhaps, coarse.

A. Yes.

Q. Is there any particular reason for the incorporation of this material throughout the work?

[fol. 202] A. Yes, there certainly is.

Q. Will you give us that reason, please?

A. One, I don't like to talk about art, because art is a pretty difficult thing to make clear. I do say that I attempt, my thesis is utterly valueless unless I can have what we call character identification. Your reader must say either I am that or I know that person. In the summing up, when you present a choice to the reader, you do not present one side of the picture and say for the other side something very innocuous like "Don't drive while drinking," or "If you drink, don't drive." That is not literature, The Lost Weekend——

Q. Don't let us refer to other books. I would like to have your views with respect to the incorporation of this material and to what extent its function was in the entire book.

A. The function——

The Court: Well, Mr. Griffin, I think probably to keep you on the right track in your testimony, you probably noticed that I've kept out any comment on your work, unless made by the person who is here in the courtroom testifying.

A. Yes sir.

The Court: The reason for that is this, the law is very jealous of its right to have people cross-examined.

A. Yes sir.

The Court: I may make a statement that might sound very, very definite, and on being cross-examined, they might show that I am prejudiced, I am not fair in it, that I don't [fol. 203] believe it in the first place.

A. Yes sir.

The Court: For that reason, we can't compare this to other books, nor can we have quotations.

A. Yes sir.

The Court: Even from as great a man as Bishop Sheen.

A. Yes sir.

The Court: In other words, let's stick to your book and the witnesses.

A. That's a very, very difficult thing to do.

The Court: I know it is.

A. Because obviously, if I——

The Court: You just tell us about the book and answer counsel's questions, and if they offer witnesses——

A. I can say it this way, then? The only way in which artistically you can convince a reader of anything, is to make the reader himself come to that deduction himself. No reader believes an author. That is an established fact.

If I sit down and I say Mrs. So-and-So was nutty as a fruit cake, they don't really believe it, but if I should show her pulling her hair out and doing a great many strange things, and putting chocolate icing on a boiled lobster, the reader deduces immediately that this woman is slightly off, that is what I meant. "If you want to show a person the horror of drug addiction, of alcoholism, of any of these things, where the soul becomes eaten by a growth which cannot be controlled by the rational element of the soul, you [fol. 204] can do nothing better than show the person, show the person if you are fighting against alcoholism, show that person, make your reader go into what he goes through." The horror of dimension,—of DTs, the terrible fuzziness of alcoholism, the craving for it. That has frightened more people away from being alcoholics than all of the science.

By Mr. Robbins:

Q. With particular reference to the realistic writing?

A. That is right, that is my reason.

Q. Was that particularly addressed to the audience that you spoke earlier about convincing?

A. Very, very muchly so.

Q. And was there an attempt in your writing, also, therefore, to show the degradation that the complete following of these impulses lead to the audience?

A. That was my whole thesis.

Q. I was just trying to instill that.

Q. Yes, that's my whole thesis.

Q. In other words, in conclusion, the incorporation of this material itself was symbolical, is that correct?

A. It was symbolical, and it was direct also. But it was symbolized, it symbolized sin, it symbolized all misuse of virtue, of the gift of God.

Q. To a certain extent, the bluntness of the language that

was employed, was there any connection with that and the scene or locale of the story?

[fol. 205] A. The bluntness of the language, it was convery, very definitely. "I spoke in the idiom of the countryside. I don't say that that has to do so much with the locale of the story. I hear infinitely blunt language, I hear it every day on the streets, and every contact that I have in life in human America. That is not particularly restricted to this little village in France. I have always found, I have always felt in my work, in work with patients, in work with children, also, that frankness, rarely, rarely in the long run, does harm."

Mr. Robbins: No further questions, your Honor.

The Court: I think we should take a recess at this time.

(Court in recess.)

The Court: Defense Exhibit No. 1?

Mr. Robbins: Yes, your Honor.

The Court: That was admitted in evidence?

Mr. Robbins: Yes.

The Court: The library book?

Mr. Robbins: Yes.

The Court: Where is it? Do you have another copy of this. This is the one you signed for.

Mr. Comb: Yes sir.

The Court: In other words, we were quoting your number.

Mr. Kent: Your record.

[fol. 206] Mr. Robbins: I think it is Mrs. Combs' number.

The Court: I am sure, without going into it, I am sure Mrs. Combs got this book, this is no reflection on anybody on any side, but I am sure it was at Mr. Comb's instructions.

Mr. Comb: I got it myself.

The Court: On Mrs. Combs' card?

Mr. Comb: Yes.

The Court: I don't want to blame her for anything.

Now, the Prosecutor has another Exhibit of the changes made?

Mr. Kent: That is correct, your Honor.

The Court: And you want to use this book, I understand?

Mr. Kent: And also Defendant's Exhibit No. 3, which are the pages which were actually used, before this book, People's Exhibit No. 1——

The Court: They are all in evidence. So, if you need them in your questioning, go ahead.

Mr. Kent: Excuse me. Thank you, your Honor.

[fol. 207] Cross-examination.

By Mr. Kent:

Q. Now, Mr. Griffin, did I understand you correctly when you said that one of your purposes in the book was to put on paper experiences, feelings and emotions which the reader has already, himself, experienced. Was that correct?

A. That, I don't know if that was exactly the way I said it or not.

Q. I don't purport to be so——

A. That is aesthetically correct, if not factually correct.

Q. Now, would you say, Mr. Griffin, that your book was written primarily for adults, rather than children? Yes or no, if you are able to.

A. I would say that that really didn't enter my mind.

Q. Well, did it enter your mind, Mr. Griffin, that the book might possibly be read by children?

A. Yes, it did.

Q. Do you feel, Mr. Griffin, that children would be able to understand the book?

A. It depends on the age. I think that——

Q. Would it also depend upon the experience of the child?

A. Certainly, to some extent, yes.

Q. Now, you say you didn't have any particular age group in mind, is that right?

A. No, I can't say that I did.

[fol. 208] Q. Well, c-uld you tell the Court, please, Mr. Griffin, why you chose the sex act as the symbol of all sins that are prevalent in the world?

A. Yes. Because I think I've already explained. Because that is an aspect of life that is universal. It touches and is also one of the most dangerous, and certainly one of the most dangerously misunderstood.

Q. Of course, you didn't have children in mind when you wrote those passages, did you, dealing with the sex acts with the full and complete consummation of the sex act?

A. I certainly didn't have children in mind. You don't really have — specific person in mind when you create. I don't believe you can. You have only in mind what you are treating. The thing you have in mind comes before the act.

Q. Mr. Griffin, did you feel that the intimate details of the sex act were necessary for a consummation of the good literary style?

A. I felt that from the viewpoint of what I was aiming at, and from the viewpoint of artistic integrity, that by some absolute, they were necessary and justified.

Q. Now, you wrote this book in '49, did you, Mr. Griffin?

A. 1949, yes.

Q. Now, there have been four editions, have there not? The first edition was what is referred to as——

Mr. Robbins: Smith's hard cover.

A. There have been five editions.

By Mr. Kent:

Q. Well now, where was the fifth?

[fol. 209] A. The fiifth is now coming out in Holland.

Q. Has that come out as yet?

A. I don't know, it's due to come out right now, if not very shortly.

Q. For these purposes, shall we say four, because there are four we are familiar with?

A. Yes.

Q. The first is known as the Smith's hard cover edition?

A. That is correct.

Q. By the Smiths Inc. publishing Company?

A. Yes.

Q. And that was published where?

A. The publishing house is in Fort Worth.

Q. Now, when you had the first hard cover editions published, Mr. Griffin, that was on the submission of your first manuscript, was it? Your first completed manuscript after the rewrites, and so forth, is that right?

A. Yes.

Q. And——

A. I think I understand what you mean, I think that is correct.

Q. —and at that time you felt that everything you had in that particular edition, was necessary for a continued readability and good literary styling, isn't that right?

A. That is correct.

Q. All right. Then what was the next edition that came out, do you recall?

A. The next edition, I believe, was the Collins edition in England.

[fol. 210] Now, what changes were made, Mr. Griffin, in the Collins edition in England that differed from the first edition, the Smith's hard cover edition which is Defendant's Exhibit No. 1?

A. The changes that were made, were changes made primarily at my request. They had to do with editing, with the changing of some terms, and with one implication of theological error.

Q. Now, did Collins themselves make any changes before they would publish that book, either in Canada or England?

A. None whatsoever.

Q. None whatsoever?

A. None whatsoever.

Q. You made none yourself on their request, is that correct?

A. Yes, I did. But I asked them—they were very, very definite that they would publish the book as I wanted it. I asked them for their suggestions. I also said I would appreciate very much, if this goes back to my original manuscript, from my editorial errors, which were unfortunately made.

Q. Yes.

A. The Collins edition was not an altered edition, but a corrected edition with the exception of obvious changes of spelling, and with the deletion of—I don't remember specifically, the major deletion was at my request.

The Court: What was that?

A. It was a clarification in the hard back edition published here. There were a number of errors in nomenclature and there was one implication that was unfortunately

altered from my intent, to give the idea that there might [fol. 211] be some possibility of a priest breaking the seal of the confession. I did not, of course, allow that to go any further. And that was the major change that was made in all subsequent editions. It concerns, I believe, about a paragraph or possibly two.

Q. Well now, I have in my hand—strike that, please. The changes, you say, other than that, were entirely your own?

A. That was my change. The changes in the editing, actually are my own. There are three or four changes that I asked Collins for all possible suggestions. He sent me a list of suggestions. From those, I took the ones which I thought, as an author, clarified the intents of my work. There was no specific, if I had turned them down, they made it quite, quite clear that if I did not agree with them, it was up to me.

Q. How many changes were made in the edition that Collins published, from the hard book cover, approximately?

A. Including punctuation?

Q. Yes, changing of words.

A. There were 380, I believe, changes.

Q. Now, would you say that that did not destroy the literary style?

A. I would say that that reverted back to my literary style. The editions that Collins published, and Pocket Books published, and that were published in France, are very, very accurate to my work. The alterations that unfortunately crept into the first edition, are not my work.

Q. Now, you know that——

[fol. 212] The Court: Just a minute. Do I understand you correctly, the Smith edition?

A. Yes sir.

The Court: Some alterations were made by your publisher in Texas there?

A. They were made in the process of editing.

The Court: That's what I mean.

A. Yes.

The Court: Not by you?

A. No sir.

The Court: Your attempt, your alterations that you suggested to Collins——

A. Reverted to my original manuscript.

The Court: Reverted back to your original manuscript.

A. Yes sir.

The Court: In other words, you felt that your original manuscript suffered in the Smith's edition?

A. Yes sir.

The Court: Very well.

By Mr. Kent:

Q. You felt that on page 73, change No. 32, the word "love" should read "heterosexual relations" rather than the plain word "love?" Do you recall that particular thing?

A. Yes.

Q. You felt that that would be more descriptive?

A. I felt it would be more accurate.

Q. You felt that would revert back better to your original manuscript?

[fol. 213] A. That is an alteration which did not—it was not originally a perversion of my manuscript, it is a thing I did for clarification after.

Q. Did I understand you correctly, Mr. Griffin, to say that there was only one request by Collins?

A. You did not understand me correctly. I said they sent me a list of suggestions.

Q. Yes.

A. I adhered to those suggestions, I think I was in perfect agreement with them. I don't know that I refused any. I was in quite agreement with them. They were a very, very small list. I think perhaps four or five. I can't be accurate about that.

Q. Well, did they ever delete and request that you change whole paragraphs?

A. My impression, I'm at a very severe disadvantage. I have no visual picture of that book, I don't know how it is paragraphed. I would say there might have been instances wherein a given portion of the book, the deletions would have amounted to a paragraph or possibly more, I don't know.

Q. Well, let's see if I can count, I am looking now, Mr. Griffin, at Defendant's Exhibit No. 2.

A. Yes.

Q. Being the editorial corrections for Collins publishers of "The Devil Rides Outside."

A. Yes.

Q. I shall continue now the number of changes, count the [fol. 214] number of changes requested by Collins, before they published the book.

A. No, I beg your pardon. That is a bad implication. There was no request by Collins before they would publish my book. They would publish my book untouched.

Q. They requested certain changes be made?

A. They did not. I requested that they make certain changes.

Q. Do you know, Mr. Griffin, who prepared this sheaf of papers which I am holding, containing editorial changes for Collins publishers?

A. I did that, I typed that myself.

Q. What does this mean, page 173, change No. 101, change requetsed by Collins, but not on Collins list of corrections?

A. That means that the request of Collins is my request for their suggestions. That means that Collins said in such and such a thing, this will either not be understood in England due to our particular manner of language, or something else, or this would be, it seems to us, repetitive, or something to that effect. They would suggest an alteration or a deletion.

If I agreed with that, this book is very closely knit. It implied that for one sentence or one word or one thought that was deleted or altered on such and such a page, perhaps a hundred pages over or ten pages over, or fifty pages over, that would have ramifications dealing back to that sentence and so forth. So I would, in order to make it [fol. 215] consistent with the original change, I would be obliged to alter the wording or something like that.

The Court: Can you think of any changes there that were made, you say that the language, that it wouldn't be understood there, wouldn't be appreciated, or wouldn't be enjoyed, or something, in England, that was different than American version?

A. I can think of one scene which is not a scene that—very few of these scenes, as a matter of fact, have anything

to do with the so-called sexual aspects of this work. One scene is very pathetic scene, in which Salesky's mistress attempts to prove that she is not pregnant. The attempts to me were valid, to illustrate an area of poignancy and of pity there. That was in no way suggested that they would not publish the book with that in it. They said they felt it would be to their advantage if that scene, if I thought it did not destroy the continuity of the work, be deleted.

By Mr. Kent:

Q. In other words, Mr. Griffin, is that portion deleted in the Collins edition?

A. My impression is that it is.

Q. You don't know?

A. I think what it was, there was a substitution bridge passage.

Q. And still the book was published with that particular deletion?

A. Yes.

Q. In other words, portions of this book, Mr. Griffin, it has been felt by certain publishers, can be deleted and still not destroy its literary value?

[fol. 216] A. It has not been felt by publishers, you are completely in error when you say that.

Q. At least Collins said——

The Court: No, the witness said that he felt it would not destroy the continuity.

A. That is right. This is not a thing which publishers have written to me and requested, Any deletions whatsoever.

The Court: Let me ask one question. Now, when you, this Pocket series here, Exhibit 1——

A. Yes sir.

The Court: —Pocket Books, Inc., when that edition came out, did this particular paragraph, was that returned in this edition, the one that was deleted by England or by Collins?

A. I think it was, yes.

The Court: It was returned in the book?

A. Yes sir.

The Court: All right.

By Mr. Kent:

Q. Even though it was deleted by Collins?

A. That is right.

Q. And at the time, you agreed to delete it, you felt——

A. Deleted by me.

Q. You agreed to delete it, did you not, Mr. Griffin?

A. I agreed to delete it, yes.

Q. You felt that that portion, by the deletion of that portion at any rate, it would not destroy the literary quality nor the continuity of the work?

[fol. 217] A. For the purposes of that audience, I felt that. You must realize——

Q. You have answered.

Mr. Robbins: I object.

The Court: He is entitled to an explanation.

Mr. Kent: I am sure counsel will permit all the explanation on re-direct.

A. No——

By Mr. Kent:

Q. I don't mean to be abrupt, Mr. Griffin.

A. I realize that. I don't—I will say that for a different audience, there are different points of importance. I think that the privilege of every human being is to speak differently. That same human being in church, in an English home, in an American home, in a prison, to me that scene did not fit with the book as it was destined for a British audience.

The Court: What's the difference between the British audience and ours?

A. There is a very great difference. Their entire manner of thinking and behaving is on a social level quite different from the Latin of Spain, Italy or France.

The Court: I am talking about the United States. You put this part in in the United States edition, and yet you deleted it in the English edition. Now, I am asking you what is the difference in the English and the American?

A. And the Americans? I can at best give you a poor [fol. 218] answer. My impression is that the American

civilization has no clear cut, almost, you might say, stereotype, you cannot pin an American down as far as civilization. There is a British type. There is to me no particular American type. We have influences of Puritanism, of Latin ancestry, of Anglo-Saxon, of Teutonic, which make us an enormously broader category of people to attempt to categorize. The differences between the British and the American on every level that I know it—I know British schoolboys, I know British soldiers, I know British housewives. Everything about their life is essentially different from ours. When you make friends with an Englishman, you make friends with an Englishman on an entirely different basis than you make friends with an American. I should say with an American you can make friends with him, have relations with him on many, many different levels, and in Britain on a very much more restricted area of levels, because the Britain is the type——

The Court: Very well.

By Mr. Kent:

Q. Mr. Griffin, in reading Defendant's Exhibit 2, which is the editorial corrections for Collins publishers,——

A. Yes.

Q. —I have counted twenty-six instances where you have the notation "deletion by request of Collins."

A. Yes.

Q. Now, that's more than five or six, of course?

A. Those, you will find also, showed not requested by Collins, but to concord with the deletions which I made, [fol. 219] which were based on the five, six, seven, eight at the most.

Q. I have four and five pages marked by request of Collins.

A. You have what?

Q. I will show them to your counsel at the present time. Mr. Robbins: I am familiar with them.

Q. My point is this: Of course, we must assume now that the morals of the Canadian and British people are a little bit different than those of Americans and say——

The Court: I don't think there is any basis for that statement.

Mr. Robbins: I object to that remark.

A. In the first place, this is not to do with morals, my dear man. Many of these passages have nothing to do with moral issues.

Q. At least, by the deletion of these various phrases that were requested—paragraphs and pages that were requested by Collins—they didn't destroy the literary value of the work.

A. They did not destroy the literary value of the work for that particular audience.

Q. And there were twenty-six of those pages?

A. Twenty-six of those pages.

Q. Twenty-six of these requests, some referring to paragraphs, some referring to words, and some referring to pages.

Mr. Robbins: If your Honor please, I object to the question.

A. I don't know, I simply don't know.

The Court: Just a minute.

[fol. 220] Mr. Robbins: I think if counsel is going into these things, I think he indicates in the twenty-six what type of corrections were involved. Otherwise, he gives the implication the corrections of substance or that they effect moral sense.

Mr. Kent: I don't know, of course. Mr. Griffin made the changes himself. The point is that——

Mr. Robbins: Corrections were——

Mr. Kent: The point is changes were made and that they were requested by Collins that they be made.

A. They were not.

Mr. Robbins: Just a second, Mr. Griffin. We addressed the Court. I am sorry.

The corrections that are indicated are indicated right on the schedule in Mr. Kent's hands. Many of them are not changes of substance or language or scenes or any of the things in dispute here, and I think it gives a wrong implication to indicate that there are twenty-six pages of changes in sexual or passions of the book.

The Court: I will say to you, Mr. Robbins, that wasn't the impression of the Court at all. The impressions the Court got were there were these changes. Some of them on account of grammar, some others on account of punctuation.

A. Editorially.

The Court: And some words were changed, but the witness has also testified as to one change I think is important and I think that along those lines, counsel should be permitted to ask or question about any change there. Then, [fol. 221] of course, you can by cross-examination, show what these changes are or by re-direct, I am sorry.

Mr. Robbins: I don't mind counsel referring specifically to any particular change in cross-examining the witness about that, but I don't think the assumption of twenty-six pages of changes leave a fair implication.

The Court: I think you are aware that I've had those changes in my possession. They've been offered. As a matter of fact, I've studied them quite thoroughly. Unfortunately they should have probably been in the hands of the prosecutor instead of mine. He just got those back from me this morning, so I don't know how many he has, and I have never seen, or never examined—I have not examined, let's put it that way, the editions—the edition that's in the library, as to the changes themselves, except as indicated on the sheets.

Mr. Kent: May I proceed, your Honor?

By Mr. Kent:

Q. Mr. Griffin, for purposes of clarification, did you prepare that yourself, or did you have—this is Defendant's Exhibit 2, Editorial corrections for Collins publishers, or did some one prepare it for you?

A. I typed it, I don't know if that's a copy. I typed a version of it.

Q. So we will be able to check which have been deleted, would you tell us what the notation, page 4, one, two, opposite that means?

A. Page 4, one, two?

Q. There is a notation page 4. Now, what page 4 does that refer to?

[fol. 222] A. That refers to page 4 of the original hard back edition.

The Court: That's the Smith?

A. That's the Smith.

Mr. Kent: What is this?

The Court: The pages are from the Smith.

Mr. Kent: They may not be, your Honor, haven't been able to check them.

A. There will be no point of marking the Collins edition.

The Court: Just a minute.

Mr. Kent: Just us, Mr. Griffin, we are checking the various manuscripts that we have submitted here.

A. Yes sir.

(Discussion off the record.)

The Court: I wish counsel for both sides would step up here, please.

(Discussion off the record.)

Mr. Kent: May it please the Court, for purposes of clarification, I think the import and the contents of the various Defendant's Exhibits should be placed upon the record. Now, it is my understanding that Defenadnt's Exhibit 2 contains changes which were made in the original manuscript by the Collins Publishing Company, or am I incorrect?

A. I think you are incorrect.

Mr. Kent: In the Smith?

Mr. Robbins: You are having trouble, Mr. Kent, because you referred to the original manuscript, and the witness has consistently stated that you should not work on the [fol. 223] original manuscript but compare the Collins edition with the Smith's published edition. The witness has taken the position that the Smith's edition made changes in his manuscript that he didn't know about and that's why you have the confusion.

Mr. Kent: That's why we want to clarify it.

The Court: I noticed when you left here, that in my mind, at least I think I know what's in there and why, but from

the way both of you stated, I thought this would happen and I guessed right, so go ahead.

In other words, the original manuscript has never hit the streets. But these, the Smiths, Collins publications have. So let's forget the original manuscript and go on your publications?

Mr. Kent: The Smith publication differs from the Collins publication insofar as all the changes indicated on Defendant's Exhibit 2, is that correct now, Mr. Griffin?

A. That is correct.

Q. And the changes on People's Exhibit No. 1, which is the soft book cover, are those changes indicated on Defendant's Exhibit No. 2, which are underlined in red pencil, is that correct?

A. That is correct.

Mr. Robbins: Changes, you mean, from the Smith hard cover edition?

Q. From the Smith hard cover edition. Those which are not underlined in red are in the Collins edition, are not in the Smith's edition, and are not in People's Exhibit No. 1. I hope that clarifies the record.

[fol. 224] A. I beg your pardon. You said those underlined are not in the Collins edition?

Mr. Kent: I said they are.

The Court: But not in this book as it is here. Just to bring this altogether so we won't have confusion again. Exhibit 2, Defendant's Exhibit 2 is originally the changes from the Smith's to the Collins edition.

Mr. Kent: Right.

The Court: Those marked in red are the changes in the Collins edition that remained in the Pocket Book series. Those not marked are those that were changed for Collins alone, is that correct?

Mr. Robbins: That's my understanding.

Mr. Kent: Another way of tsating it, I think that's correct also.

By Mr. Kent:

Q. Now, did any of these changes, other than those which you've told us previously, destroy the literary style in any way?

A. I would never have allowed them if I thought they had.

Q. You feel that they had not?

A. That is right.

Q. Did I understand you previous, Mr. Griffin, to say that you didn't write the book for college professors, you also mentioned judges, you failed to mention lawyers. So, we feel slighted.

A. I am very sorry.

Q. Even though, I have read the book. But you say, you [fol. 225] said, did you not, that it wasn't written for any particular class?

A. Yes, I said that.

Q. Or any particular level of understanding?

A. That is true. I said that specifically because there's been a great many statements around here that you've got to have a Ph.D in order to get anything out of that book. I say if that's the truth, I have failed utterly.

Q. You have been present in Court when Professors Bradley and Huntley testified that this work of yours, this book, this literary effort, in order to be properly understood, in order to be well read, in order to be the great work of literary art that it is, should be taken as a whole, fully and completely as it exists in Defendant's Exhibit No. 1, did you hear them say that?

A. Absolutely.

Q. Now, you, who wrote the original manuscript, have had it published by three different publishing companies and have had is published four times, and there have been some substantial changes made, have there not?

A. There have been no substantial changes made. I——

Q. To your way of thinking?

A. Beg your pardon?

Mr. Robbins: If your Honor please, that's arguing with the witness. The witness answered.

The Court: Objection sustained. You both disagree on it.

Q. There have been some changes made?

A. Yes.

[fol. 226] Q. And there have been some deletions and striking out of paragraphs?

A. I wouldn't say of "paragraphs."

Q. Or of portions thereof?

A. Yes.

Mr. Kent: All right, Mr. Griffin, thank you very much.

Re-direct examination

By Mr. Robbins:

Q. Just a few question on redirect. In this schedule which is Defendant's Exhibit 2, the word "request" which my friend referred to continuously, this was typed by you?

A. Yes.

Q. Did you mean by that——

The Court: No, what did you mean?

A. I should have said suggestion. This was a working deal for Mr. Collins editors. I chose the word request with no idea that it was going to have this sort of ramifications. I should have chosen a more accurate word. I might have substituted suggestions or requested suggestions.

Q. In other words, there was no significance——

A. Why no, that's like putting on a tie. It's something you do.

Q. Well, actually there was a conversation between yourself and Collins' editors as to this?

[fol. 227] A. Yes—there was correspondence.

Q. Correspondence. And will you give us the substance of that correspondence, as to whether any changes should be made. I am trying to get the background of how this word "request" appeared.

A. I should say that I am very, very amenable to suggestions from editors. I feel that I can learn a great deal fro[illegible] every editor that I've ever met. Every time I submit a manuscript, a book or anything to any editor, I always say I would consider it a favor, a great service, if they would rip this work to pieces critically and editorially.

Q. Come down, I am asking particularly, in the correspondence between yourself and Collins.

A. This is the initial correspondence.

Q. You asked them for their suggestions?

A. That is right.

Q. They sent you suggestions. Can you answer that yes or no, did they send you some suggestions?

A. I don't think I can answer it yes or no.

Q. All right, then, don't.

A. Many editors who are good editors, they wrote back very, very cautiously and said "We will publish your book as is, we want it as is, but perhaps there are a few suggestions and if you would really like to have them, write to the Editor-in-Chief." I wrote the same thing about two or three times, bending over backwards so they would realize [fol. 228] they were not offending me by making the suggestions that I wanted to hear. After that, my request was answered and if that is a request from their side, you know, I think it's a very great exaggeration.

Q. In other words, the things ultimately pointed out, you typed on this schedule as a request?

A. Yes, it's an unforgivable sin for an author to make that kind of a mistake.

Q. Now, the scene about Salesky, which you said was not in the Collins edition?

A. That has nothing to do about Salesky.

Q. Salesky's mistress, the particular scene which you testified was not in the Collins edition?

A. It's on the list. Now, I've never read the Collins edition. I am sure it is not.

Q. But it's in the Smith hard cover edition, the edition which is in the Public Library?

A. That is correct.

Q. And it's also in the edition by Pocket Books?

A. That is right.

Q. In America there was no difference in the edition?

A. None on that point.

Mr. Robbins: I have no further questions. That is all, Mr. Griffin. I beg pardon, his Honor may have some questions.

Mr. Kent: I have a few.

[fol. 229] Re-cross-examination

By Mr. Kent:

Q. Mr. Griffin, this Collins edition, do you know whether or not that contained the incident of Mr. "X" who was your central character——

Mr. Robbins: If your Honor please, I think further questions as to the Collins edition, the Collins edition isn't in issue in this Court.

The Court: It may be answered. I am interested to know why these changes were different in England, why something is good over there and not good over here.

A. It's a compliment to America.

Q. Did you want that on the record, Mr. Griffin?

A. I think it's all right to go on the record, it's very true.

The Court: Just a minute. I don't think there is anything said here that shouldn't go on the record, and in answering, talking, I think Mr. Griffin should—answered me because I asked him. I don't think he was trying to hide anything.

Mr. Robbins: I am not aware of anything that was said at all.

The Court: If you want the thing repeated, Mr. Kent, you will ask it and counsel can know what the witness said. All right, very well.

Q. The pending question, Mr. Griffin?

A. Yes sir.

Q.—is whether or not the Collins edition contained the build-up between Mr. "X" and Lucette for the sharing of [fol. 230] the apartment and the bed as a matter of convenience?

A. It contained identically the same thing, with the exception, I believe, of one repetitive sentence.

Q. Did it contain the bedroom scene?

A. Yes.

Mr. Kent: Counsel doesn't happen to have present in Court a Collins edition, does he?

Mr. Robbins: No.

Q. The Collins edition——

A. Since they didn't suggest any except that, I am positive that there would be no other change, except I think there is a question of one sentence possibly.

The Court: Do you know the sentence?

A. Yes sir.

The Court: And was that at your suggestion or theirs?

A. That was at their suggestion.

By Mr. Kent:

Q. There were altogether 380 changes from the Smith edition to the Collins edition, is that correct?

A. I believe that is correct.

Mr. Kent: All right, that is all.

[fol. 231] Re-direct examination

By Mr. Robbins:

Q. The book is how many words?

A. I judge it to be around a quarter of a million words.

Q. And this edition, People's Exhibit 1, is 579 closely typed, closely printed pages?

A. Yes.

Mr. Robbins: I have no further questions.

Re-cross-examination

By Mr. Kent:

Q. Any idea how many words are contained in the Pocket Book edition, do you have any idea?

A. It's essentially the same word count.

The Court: I think, counsel, a small change in a lot of them wouldn't make much difference in the entire book.

Mr. Robbins: I have no further questions.

Mr. Kent: I have no further questions.

The Court: Mr. Griffin, you have said that none of these changes, or that any changes, would have made a difference in the presentation of the book, in one sense, then you tell us that some changes were made in the Collins edition. Now,

I'd like to just know whether you feel that those changes made were made solely for the British consumption, be-
[fol. 232] cause of their make-up, or whether they were made to make the book less objectionable to the British.

A. I don't think the question of objectionability enters into it, sir.

The Court: You don't?

A. No, I don't. I think there is a certain—if I may make one concrete point?

The Court: Very well.

A. The use of Italics on a word gives it a very powerful emphasis. When the scene itself is inherently powerful, and you Italicize a word, you turn it, in my mind, from the realms of good taste, which is drama, into very bad taste, which is melodrama. That is primarily the objection that I had in the editing that I wanted cleared out of the British edition and the Pocket Book edition. And that, also, the incessant use of exclamation points at the end of a dramatic scene. The scenes in themselves where they needed an exclamation point, I felt if I didn't have enough ability to make that scene dramatic without having to use these false props, that I hadn't succeeded. I hadn't—I didn't like the over-emphasis of the punctuation.

The Court: You feel that none of these scenes, none of these passages, none of these chapters, I don't mean chapters, I mean paragraphs——

A. Yes sir.

The Court: —that standing in and of themselves, are either obscene, lewd, lascivious or immoral?

A. I certainly do not—in and of themselves?

[fol. 233] The Court: Yes. If I should choose to pick up a book and turn on one page alone, would you say that any of that is either lewd, lascivious, obscene or immoral?

A. I would say no.

The Court: Very well, that is all.

(Witnessed excused.)

Mr. Robbins: At this point, your Honor, the Defense rests.

The Court: Now, we have approached the point in this

case where the Court wants to consider this last motion filed by the defendant.

Mr. Kent: Well, as I understand it, it is not a motion, your Honor.

The Court: It is a brief as to the law supplementing their motion. I don't want to make any mistakes in this case. So far, I have been given citations by the Prosecutor, but have been furnished no briefs. I would like the Prosecutor between now and Monday, to have his side of this in the form of a brief, so it can be examined carefully.

Mr. Kent: All right.

The Court: Because those citations are on that record, but they are not in the file as your side of the case. Now, there are some cases cited in here which cause me to believe that maybe I have been wrong in trying to seek outside suggestions and advice on whether something is immoral, indecent, lascivious or lewd, but it rests with me and I shall [fol. 234] make up my mind and decide it. If we call witnesses, I want to be sure that I have the authority to do so, and if I have no such authority, the case will probably come to a quick close. So, to determine that matter, and because I, like every other Judge, just does not like to be reversed by another Court, I want to be very careful and we will adjourn this case until 9 o'clock to-morrow morning.

Mr. Robbins: Your Honor please, may counsel and myself speak to you in chambers with respect to the schedule of next week?

The Court: Very well.

(Case adjourned until 9 a.m., July 12, 1954.)

[fol. 235] RENEWAL OF MOTIONS AND DENIAL THEREOF

July 12, 1954.

Mr. Robbins: Your Honor please, at the precise moment, before I technically rest the Defense, I should like to renew all motions which have been made hitherto in this case, on the ground of the unconstitutionality of the Statute, and I should also like at this time to move again for the dismissal of the charge in this case, not only on the grounds already

stated and repeated here, but also on the grounds that the evidence at the close of the defendant's—of the defense here now establishes that the defendant, there is no proof beyond a reasonable doubt that the defendant is guilty of the charge.

The Court: As to the unconstitutionality of the Statute, in spite of counsel's brief, the Court's own research, and the briefs submitted by the prosecution, I am going to decide against you on that. I am holding that the Statute under which this case is being tried, is constitutional, and is not in violation of the First or Fourteenth Amendments of the Federal, United States Constitution, and does not violate the Freedom of the Press guaranteed in the State Constitution.

Now, as to the second grounds, that is, that the People have failed to prove a prima facie case, the Court will also deny your motion to dismiss on that grounds, because they have proved the sale, they have proved by Inspector Case, the reasons for its having made the arrest.

[fol. 236] So, we will proceed with the defense.

Mr. Robbins: The defense rests.

Mr. Kent: We have some rebuttal witnesses that we'd like to present.

The Court: Very well.

Roy Denial, sworn by the Court Clerk on behalf of the People, was examined and testified as follows:

Direct examination

By Mr. Kent:

Q. Will you state your full name, please?

A. Roy Denial.

Q. And what is your employment, Mr. Denial?

A. I am Executive Secretary of the Detroit Retail Druggists' Association.

Q. Who are members of that Association which you are the Executive Secretary?

A. Well, by who, I can best answer that question by saying that we have approximately seven hundred member

drug stores out of the thousand drug stores in the greater Detroit trading area, as members of our Association. Store owners, pharmacists, does that answer your question, sir?

Q. Those are all drug stores?

A. They are, sir.

[fol. 237] Q. In other words, did I understand you correctly to say that your membership consists of seventy per cent of the drug stores that exist in the City of Detroit?

A. Approximately, roughly, sir.

Q. Now, are you familiar with the manner and methods of the distribution to the drug stores of books, the paper bound books in particular?

A. Well, they are—I am, yes.

Q. Now, how are you familiar with that?

A. Well,——

Mr. Robbins: If your Honor please, I should like to object to this line of testimony unless it's related to the particular book, People's Exhibit 1. I do not see the relevance of this testimony. Speaking about books in general,——

Mr. Kent: May it please the Court——

The Court: We have discussed this, there is nothing strange. I am going to accept this testimony, just to have it on the record, the accessibility of these books to youngsters and to the public in general. It may not affect my decision in any way, I don't think there should be a different set of morals for the fellow that pays fifty cents for the book and the fellow has Three and a Half to buy the cloth bound or leather bound cover. However, I think it's important to show that they are on display and so forth, and your objection is over-ruled.

Mr. Kent: Go ahead, please, Mr. Denial.

A. Well, they are, of course, not ordered books of that [fol. 238] nature, by that I mean cloth bound books along with magazines, periodicals of all kinds, of course, are brought to the stores by the distributor and the general practice is to deliver them in bundles. The druggist does not order any of them by name, he is given them by consignment, a certain amount of books and certain titles which he is expected to display in his store as a package.

Q. Where are these displayed in the drug stores, as far as you know?

A. The cloth bound book type we are speaking of?

Q. Yes.

A. Are displayed on racks, generally up near the cigar counter or in a prominent position in the store, so that they can readily be seen by anybody purchasing other items.

Q. They are given a prominent display?

A. They are, yes sir.

Q. They are not restricted in who may approach the book shelf and look through them, is that right?

A. No, we will——

Mr. Robbins: This man has testified a course of conduct through a great number of stores here. I don't know whether we can have testimony of practice and course of conduct with respect to displays in any particular store.

By Mr. Kent:

Q. Are you in and out of these drug stores that are members of your Association?

A. I am, sir. I am in contact with druggists, also. My official position——

Q. How often——

[fol. 239] The Court: The drug stores nowadays don't confine themselves to drugs, do they?

A. No sir.

Q. I will show you, Mr. Denial, People's Exhibit No. 1, and ask you whether or not this is the type of book which you just testified came to the druggists in packages and are prominently on display in the store.

Mr. Robbins: I object to that question, on the grounds that this is a—the question of whether this is the type of book is irrelevant.

Mr. Kent: Counsel knows this book has never been displayed.

The Court: Wait, wait. I think you both agree on something and just don't understand each other. I think the Prosecutor means, is that the type of a book, as to the physical construction, that you talk about these pocket books, and so forth, without reference to the contents at

all. Is that the type of book you find on those shelves you talk about and displayed that way?

A. Yes.

Mr. Kent: I believe I said "type of book," I didn't clarify it like your Honor did.

The Court: That's what—counsel's objection, I think, was well taken on that.

Q. You say that is the type?

A. Yes sir.

[fol. 240] Q. Now, as Executive Secretary of the Retail Druggists Association, Mr. Denial, is it part of your duties to receive complaints from the druggist members of the firm?

Mr. Robbins: Your Honor please, I am going to object to this line of questioning. I don't know exactly what he has in mind.

The Court: Let's take an answer to that one question.

A. Would you give me the question again?

The Court: Do you get complaints from the various drug store-?

A. We do. When you say complaints, I understand.

Mr. Robbins: The witness has answered the question, your Honor please. I should like no further volunteering, this is his witness, direct examination.

Mr. Kent: All right.

Q. Now, as Executive Secretary, your organization is set up to be a clearing house for the complaints that effect the member druggists, is that correct?

A. We hope always to be of that service, that's one of the purposes of the Association, to be of service to the members.

Q. Have you received any complaints concerning the paper bound books that are prominently displayed in the drug stores?

Mr. Robbins: I object.

The Court: Very well, objection sustained.

Mr. Kent: I have no further questions.

Mr. Robbins: No questions, your Honor.
The Court: Step down.

(Witness excused.)

[fol. 241] The Court: My ruling on that, of course, for the purpose of the record, is what may be done in another case certainly couldn't be controlling as to this case. A book that is not an Exhibit, at least in the paper bound Pocket series.
Mr. Kent: Rabbi Adler.

Rabbi Morris Adler, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct examination

By Mr. Kent:

Q. Would you state your full name, please?
A. Morris Adler (spelling) A-d-l-e-r.
Q. That's Rabbi Morris Adler?
A. Yes sir.
Q. Where did you attend school, Rabbi Adler?
A. Jewish Theological Seminary, New York.
Q. What degree did you receive there?
A. Rabbi and Master of Hebrew Literature.
Q. Now, did you make a study of other types of literatures besides the Hebrew literature, while you were in school?
A. I did at college, yes sir.
Q. And what college was that?
[fol. 242] A. College of the City of New York.
Q. Did you receive a degree from the College of the City of New York?
A. Bachelor in Social Science.
Q. Did you do any graduate work in literature?
A. Yes, I did. I took graduate courses at Columbia University.
Q. Was that in literature?
A. In literature, yes.

Q. Now, you are a Rabbi connected with what congregation?

A. Congregation Shaarey Zedek.

Q. Does you,—do you do any work with the young people of the organization?

A. Yes, I do.

Q. Now, how much of your time, in your Rabbin*acle* duties are spent with young people?

A. More than half.

Q. Now, I will show you, Rabbi Adler, People's Exhibit No. 1, consisting of a Pocket Book edition of "The Devil Rides Outside," and ask you whether or not you have read this book?

A. I have.

Q. Have you read it fully and completely?

A. I've read it fully and completely.

Q. Now, based upon your reading of that book and the background of which you have told the Court, have you an opinion, Rabbi Adler, as to whether this book contains language that could have a tendency to incite minors to depraved or immoral acts, yes or no?

Mr. Robbins: I object, before the witness answers, I [fol. 243] object to that question, being irrelevant under the facts of this case and under the Statute which the prosecution is based, and under the charge against the defendant.

The Court: I will permit—I will withhold decision on that and permit defense counsel to cross-examine—let me ask one question first. You have examined this book as to its literary value, have you?

A. Yes sir.

The Court: Do you want to cross-examine on that, as to the Rabbi's qualifications?

Mr. Robbins: Your Honor, if I may be permitted to make a statement, ——

The Court: We have a practice here, if anything in Michigan, when there is an objection made to qualifications, we permit defense counsel to cross-examine as to those qualifications. If there is a question of whether something was done under duress or unwillingly, in the nature of a

statement or admission made, we also permit defense counsel to cross-examine as to that, to determine or to help the Court decide whether that should be in evidence or not.

Mr. Robbins: If your Honor please, the Prosecutor in introducing this witness in his preliminary questions, gave the witness's background with respect to his educational attainments and some literary knowledge, and then shifted to a question about whether or not he has an opinion as to its tendency to corrupt the morals of the young. Now, my [fol. 244] objection at this point is not only on the grounds that the new line of questioning about the tendency to corrupt the morals of the young is irrelevant and incompetent, but also, I submit that his Honor decides one question, that he works with the young of his particular congregation, has not laid any foundation to that. I would not like to question and lay the foundation of the Prosecutor, if any.

The Court: Very well, I will sustain the objection.

Now, I want to ask you, Rabbi Adler, inasmuch as you've read this entire book, you say you have an opinion as to its literary value?

A. Yes sir.

The Court: And you also have an opinon as to whether some of the material in there is obscene or not, is that right?

A. Yes sir, that is right. Yes sir.

The Court: You see the cases in Courts,—you have—have stopped the Courts from having experts on obscenity or experts on immorality, experts on lewdness and lasciviousness. However, the Courts will permit, as I see it, the testimony as to whether the material contained in there is of such literary value as to justify these particular passages that might be immoral, lewd, lascivious and obscene. So, I am going to ask you again, Rabbi, if you feel that some of the material in there is justified by the literary value of the book, can you answer that?

[fol. 245] A. That's a very difficult question, your Honor. I'd like to explain my position instead of saying yes or no.

The Court: Very well.

Mr. Robbins: Before the witness commences, I do not like to interrupt your Honor's questioning or his answer, may I have an objection to this line of questioning?

The Court: Yes. You have the right to cross-examine as to his qualifications and as to his literary qualifications, and also as to anything you may have. You have not availed yourself of that, so we will go on.

A. Your Honor, my feeling is that this is a serious book, that this was written by a man with a talent for writing, and I think with a serious purpose in his mind. And I, for one, would not be too much concerned about the corruption of the morals of any one who read this book from a literary point of view out from his interest in literature. What I am afraid of is that somehow, word gets around about certain passages that are not read in connection with the entire book, and that would constitute, of course, a different kind of effect. I am persuaded that this is a book of literary merit, and that the man who wrote it was seriously interested in the picking an area of life which concerned him.

The Court: Well, what about the obscene passages?

A. I think that if tehy are read by people who have no interest in literature as such, or in the description of character and background that are found in the book, but [fol. 246] simply to seek out these passages, there are passages that are exceedingly stimulating and which taken together with other influences in the lives of young people, may have a corrupting influence.

The Court: May have a tendency?

A. May have a tendency to corrupt, yes sir.

Mr. Kent: I have no further questions.

Mr. Robbins: I have no questions.

Mr. Kent: Thank you, Rabbi Adler.

(Witness excused.)

Rabbi Adler: I don't know if I was a witness for the prosecution or the defense.

The Court: If you were an honest witness, that is all we ask.

[fol. 247] FATHER HENRY VILLEROT, sworn by the clerk, on behalf of the People, was examined and testified as follows:

Direct examination

By Mr. Kent:

Q. What is your full name, please, witness?

A. Father Henry Villerot.

Q. Father Villerot, what church are you connected with?

A. Particular church in the Catholic——

Q. Yes.

A. Blessed Sacrament Cathedral.

Q. How long have you been ordained, Father Villerot?

A. Thirteen years.

Q. And has all your work been here in the City of Detroit since your being ordained?

A. In Metropolitan. I was in the River Rouge in my first appointments, in Metropolitan Detroit.

Q. Where did you receive your education, Father Villerot?

A. High school and college education at the Sacred Heart Seminary here in Detroit, and major seminary training in St. Mary's, Norwood, Ohio.

Q. Along with your religious studies, did you take any courses in literature?

A. Regular liberal art course, Bachelor of Arts, as a result of my college training.

Q. Did you do any graduate or post-graduate work?

[fol. 248] A. No, I did not do any.

Q. Now, do you teach in the literary field besides the religious work?

A. Do I teach in the literary field? I do not teach in the literary field, no.

Q. Have you ever taught literature?

A. As far as teaching, actual teaching of literatures, no, I have not.

Q. Now, have you worked with young people?

A. Considerably.

Q. And what type of work have you done with the young people?

A. Well, for the eight years previous to ordination, we worked at the summer camp on Lake Huron, run by the St. Vincent de Paul Society, where we, the seminarians, took charge over children from all over Detroit. The different counties here in the Detroit diocese and in my first appointment, I taught in high school and also regularly visited the grade school. During the past three years at the Blessed Sacrament Cathedral, the same is true. I have been with the grade school children. Also, in the first five years of my ordination for my priesthood, I had charge of a Young Peoples' Group which consisted of high school children.

The Court: In all this work, Father, did you ever have to examine literature to see what you felt was fit to read and not fit to read?

A. Well, three years—let's see, two years ago His Eminence, the Cardinal, gave me a position in charge of what [fol. 249] is referred to as the Library and Literature Committee of the National Counsel of Catholic Women here in Detroit, and the purpose of that Committee was to try and do something to clean up—this is the way it was given to me,—to clean up the literature, both in comic and pocket book form and even in magazine form on the stands around the City or the diocese of Detroit.

Mr. Robbins: If your Honor please, I do not like again to interrupt the witness, but I want to be sure the record contains any objection—my objection on the grounds of irrelevancy to this line of testimony and any opinion that may emanate from it.

The Court: Very well. Just a minute, Father. Your objection is noted and as to any question asked so far, the objection is over-ruled.

Q. Will you continue please, Father?

A. For these past,—about the past two years, we have been acting in that capacity and we had to read quite a few books. I can't tell you how many. We reviewed from seventy-five to a hundred books at least, in that capacity.

Q. Now, Father Villerot, I will show you People's Exhibit No. 1, being a Pocket Book form "The Devil Rides Outside," and ask you whether or not you have read this book?

A. Yes, I have.

Q. Did you read it in this Pocket Book form?

A. Yes, I did.

Q. And based upon your reading of the book, have you formulated an opinion, first of all, as to the literary value of that book, yes or no.

[fol. 250] Mr. Robbins: If your Honor please, I object on the grounds that this witness is not qualified as a literary expert.

Mr. Kent: May it please the Court——

The Court: Just a minute. I am going right back to my old form, if you wish to cross-examine the Father on that, he's testified that he has reviewed about seventy-five books, his training has been along the religious literary line, and that he has had some training in ordinary worldly literature. Do you care to question him as to his qualifications before the Court rules? I am going to allow you that privilege.

Mr. Robbins: Thank you.

Cross-examination.

By Mr. Robbins:

Q. Father, I believe you testified on direct examination already, that you took no specialized courses in literature, is that right?

A. That is right.

Q. That you only had a B.A. degree from your college, is that correct?

A. Yes.

Q. And that thereafter you did no graduate work in literature, is that correct?

A. That is right.

Q. And that you have no degree, emphasizing your proficiency or the width of your study of literature, is that right?

[fol. 251] A. That is right.

Q. Also, that you have never taught literature, is that correct?

A. Correct.

Q. Have you done any book reviewing for literary journals or newspapers or magazines?

A. No, I have no-.

Q. Now, your first actual contact with literature, I believe you came from the Cardinal's Committee?

A. With literature?

Q. I mean with the reviewing of some literature for some particular purpose?

A. In that particular field, yes.

Q. That was with a definite mandate to clean up comic books, and certain Pocket Books, is that right?

A. To do what we could to clean it up.

Q. I don't mean to put words in your mouth, Father. It was my misinterpretation.

A. Yes.

Q. To do what you could to clean up comic books and Pocket Books?

A. Yes.

Q. In the course of that. you read a lot of comic books?

A. I can't say that is right.

Q. Very few?

A. Very few comic books.

Q. And Pocket Books?

A. Yes.

Q. You realize that there are Pocket Books and there are Pocket Books?

[fol. 252] A. I certainly recognize there are quite a few.

Q. I am sure you know that the company which published People's Exhibit No. 1 happens to be called Pocket Books, Inc.?

Mr. Kent: He means Incorporated.

Q. Pocket Books, Incorporated, is that right?

A. Yes.

Q. You weren't intending to suggest that you only read its particular manufacture, you were using the term generically, to cover all paper bound cheaply sold books?

A. All the different publishing companies.

Q. Do you happen to remember which particular ones you read?

Mr. Kent: That's objectionable.

Mr. Robbins: Examining his qualifications.
The Court: Go ahead.

A. The Dell publications, Fawcett publications, Pocket Books, Bantams, Gold Metal, all of them, actually.
Q. Do you remember the titles?
A. No, I could not tell you the titles.
Q. Can't tell us the title of a single book?
A. I could do so.
The Court: He didn't say that.
Q. Tell us the——

Mr. Kent: That's irrelevant, based on the Father's previous answer, he's read hundreds of them and the publisher——
Mr. Robbins: I am not asking for comparisons.
[fol. 253] The Court: Sounds awfully close to it.
Mr. Robbins: I am testing his qualifications as a literary expert, to give his opinion, and I think under the frank answers of the Father, that his, — my contention is going to be that his experience as a literary expert does not qualify him fully to testify in this case as a literary expert.
Mr. Kent: May I say this on the record——
The Court: Just a minute, I have not tried to stop you from cross-examining the good Father in anything.
Mr. Robbins: I appreciate that.
The Court: Except, we are not going into comparisons. The Father said he read several books and gave you the name of the publishers, and he also said he couldn't name them all, said something to that effect, and you said "You mean to say you can't name one of them?" He didn't say that at all.
Mr. Robbins: I beg your pardon.

By Mr. Robbins:

Q. Can you name any of them?
A. Yes, I can.
Q. Now, when you first got into this reading of these twenty-five cent or paper bound editions,——

Mr. Kent: He didn't say twenty-five.
Mr. Robbins: I beg your pardon.

Q. Paper bound editions?

Mr. Kent: Were you referring to the price?

Mr. Robbins: I had no intention of it. I am trying to distinguish this, because the Doctor's experience emanates, [fol. 254] as he says, from his reading of these works, in connection with his recent committee work.

Mr. Kent: He doesn't limit it to that, though.

The Court: Well, now wait. I've already asked you two not to talk across the table. If you have some objection I want to rule on it because that settles nothing.

Mr. Kent: You are right.

The Court: Very well, go ahead.

Mr. Kent: I am sorry, your Honor.

Mr. Robbins: Now, if your Honor please, I have no further preliminary questions on cross-examination as to his qualifications, and I renew my motion—I renew my objection to this witness's literary opinion.

The Court: I am going to over-rule your objection. I might say all these things that go to the degree rather than to the admissibility. I am going to make the same ruling, proceed.

Mr. Kent: Thank you, your Honor.

[fol. 255] Re-direct examination.

By Mr. Kent:

Q. Now, Father Villerot, I believe the pending question before the objection was as to whether or not you have an opinion as to the literary value of this particular work, "The Devil Rides Outside?"

A. As far as the literary work, it definitely falls into a present classification, modern literature, and certainly has merit in that particular field insofar as I might say, the proper telling of the story that the author intends and his description, and that's what I would say in regard to it on a literary basis.

Q. Based upon your background and your experience, Father Villerot, have you an opinion as to whether or not this particular book is immoral, obscene, lewd or lascivious?

Mr. Robbins: Your Honor please, I'd like to record my objection.

The Court: Your objection is sustained. Now, let me ask you a question, Father. Do you think that all this—was there some parts in there that are obscene to the average individual?

A. Could I classify that, Judge?

The Court: Well, I know what you have in mind.

A. In a way.

The Court: Let me ask you this, without going into any expert. Would the parts in there that were not to your liking, or not moral, or lewd, lascivious or obscene, would [fol. 256] the purpose of the author in your mind, have justified the inclusion of those parts in that book, and you may have an objection to that, and I am going to take the Father's answer.

A. As a literary work, maybe. As a work that should be given to the public for public consumption, no.

The Court: You think that the literary value of the book would have been impaired at all by removing or changing some of those parts in the book that, well, particularly the vivid description of the, let's call it, sensual rather than sexual act. Do you think the literary value would have been destroyed if some of those were changed?

A. According to my idea of the literary value, I'd say no.

By Mr. Kent:

Q. You feel that it was unnecessary to go into the intimate details of the sensual act?

A. Yes.

Q. And that could have been done without destroying whatever literary value there might have been to the book?

A. I think so, yes.

Q. Now, do you have an opinion, Father Villerot, as to whether or not this book contains language that could, would or might have a tendency to incite minors to depraved or immoral acts?

A. I definitely think that it would.

Mr. Robbins: If your Honor please, I object again.

The Court: That part, I will have to ask that the answer

be stricken, because you are getting right down again to what the Courts have tried to stop, and that is to express [fol. 257] an opinion on what is or what is not an obscene, —that is a matter that the Court finally has to decide.

Mr. Kent: May it please the Court, I have submitted——

The Court: I know that, I've read the book and I know that this answer is objectionable. I know that I don't need it for making a final decision.

Mr. Kent: All right, your Honor.

The Court: I am not going to let error creep into the record.

Mr. Kent: May I say that based upon my investigations of the cases on the statutory law aspects, as effect- this particular question, I don't think that that would constitute error.

The Court: Where is your citation on that, which one are you referring to? Give me the citation that you have there. I have your brief here.

Mr. Kent: DeGrutt vs. Winter, page 261——

The Court: Along that line, I am going to disagree with you. That's a question of whether a certain injury might cause an abortion or something. Although it's in point as to cause and effect, what may have caused something, I don't think that applies to opinions on obscenity. In spite of the fact that the Court would welcome the help of everybody in the City, the Supreme Court has said that I can't do it, so I am going to sustain the objection.

Mr. Kent: May it please the Court, we don't intend to have our witnesses tell your Honor what is obscenity and [fol. 258] what might consist of lewdness or immorality. However, we think that these, especially Father Villerot, who has done such extensive work with the young people——

The Court: Now wait. I've read the book, I would be terribly shocked if Father Villerot had answered that any other way than he had.

A. Thank you.

The Court: I want to say this. Because of the Supreme Court rulings, I am going to strike it from the record. Now, that's——

Mr. Kent: All right, sir, thank you. I have no further questions, Father Villerot.

Mr. Robbins: No further questions.

(Witness excused.)

Mr. Kent: Mrs. Irving Wolfe.

[fol. 259] JEANNETTE WOLFE, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct examination

By Mr. Kent:

Q. Mrs. Wolfe, would you state your full name?
A. Jeannette S. Wolfe.
Q. Mrs. Wolfe, where do you live, please?
A. 1244 Burlingame.
Q. In the City of Detroit, is it?
A. It is.
Q. Now, Mrs. Wolfe,——
A. Yes.
Q. —are you a member of the Parent-Teachers Association?
A. I am one of forty thousand in the City of Detroit.
Q. And are you on the so-called Executive Board?
A. I am.
Q. And do you hold a particular position with the Board?
A. Yes. I am the Radio and TV Chairman.
Q. Now, does any of your work have to do with literature?
A. Yes, I would say some of it does. We have gone into educational TV this past year, and as such, we feel that we perhaps can help our children along better paths in both reading and TV.

Mr. Robbins: Your Honor please, when the witness speaks of "we" I don't think we can have a witness here for the entire organization.

[fol. 260] A. I am sorry, I should speak for myself.

The Court: Just a minute. See, this law is a very peculiar study to many laymen. There are certain things that they

permit us to say, and certain things they do not permit us to say. Now, not even the editor of one of our newspapers could use the term "we" on the stand. For instance, the police get up and "we questioned this man," that isn't it. In other words, who questioned him? You, your partner? So we will have to forget the editorial "we" and just go right ahead and testify what you did, or your work.

A. And I do not want to speak for all the others. I feel I must give only my opinion.

Mr. Kent: I didn't——

The Court: She wants to give her own opinion.

A. I feel I cannot speak for all of them, I didn't mean to say "we."

By Mr. Kent:

Q. Well now, Mrs. Wolfe, have you, yourself done any work along the literary lines?

A. Yes. In my own particular area.

Q. What is that, please?

A. In our school area, that is the Doty School, I mustn't say "we." I, personally, have gone into our neighborhood, confectionery stores, which is a part of our work as the PTA, to see that what we perhaps thought was objectionable literature was not made available to our children.

Mr. Robbins: Your Honor please, I don't think I understand the relevancy of this particular testimony. I assumed the Prosecutor was asking for her literary background her [fol. 261] efforts to irradicate what she thought objectionable literature from confectionery stores.

The Court: Well, the Prosecutor, of course, is the only one that has a right to object to a question as not being responsive, and so far I haven't heard her say anything that —she hasn't tried to express an opinion as to this particular book, and as I told the Prosecutor before, we have this one situation to meet. Although I feel that I know what most of these people will testify to, there is a limitation placed on me by our Courts. So, what I want to do, is find out what literary training she's had to pass on this, otherwise, why, it is from the standpoint of the defendant, subjected to that one objection.

By Mr. Kent:

Q. Now, do you have any literary training as such in the school system of the City?

The Court: That doesn't mean college degrees, necessarily. It's whatever literary training you feel you've had in passing on the literary value of any books.

A. Well, I am afraid I don't quite understand what you would term literary training. I never taught English, if that's what you mean.

By Mr. Kent:

Q. Did you study English Literature?

A. I have in high school, I did not take it in college, no.

Q. What college did you attend?

A. I did not. I am a graduate of a high school and a business institute.

[fol. 262] Q. And you did no literary work at all, as far as the commercial field is concerned, is that right?

A. Well, I don't quite connect literary and commercial. You mean if I have read——

Q. You have read books for your own edification?

A. Many of them, yes.

Q. And do you feel, Mrs. Wolfe, that you are in a position to render an expert opinion?

The Court: Wait, wait.

Mr. Robbins: I think that's pulling ourselves up by the boot straps.

The Court: No, I don't think it's that at all. The thing is this: We have, for instance, all the psychiatrists that I know of, the man whose opinion I took in preference to anybody, is a man who never was or never proposed to be or purported to be a psychiatrist. That's old Doctor Clarke from Receiving Hospital. I think he knew more about it than nine-tenths of the others, maybe 99 per cent. Maybe there are some qualifications this witness has which are from intensive reading, that might make her a witness as to the literary value of the book, or whether the parts there might interfere. I think you can ask questions along that line, but we are not going to permit any of the other, because the Courts have stopped it, and I want this record to

be as clear as I can possibly make it. In other words, as I understand it, the Courts have said there are no such thing as experts on obscenity.

[fol. 263] Mr. Knight: That is right.

The Court: There are experts on the books, whether they are of literary value, and the Court must decide from the book and from the experts that have testified, whether the material tends to——

Mr. Kent: Corrupt the morals of youth.

The Court: Corrupt the morals of youth, or whether it is obscene, lascivious, lewd or immoral.

Mr. Robbins: I was only objecting to the Prosecutor's question, as to her value of her own opinions.

The Court: That's just about what it was.

Mr. Kent: I felt—I asked her if she felt——

The Court: I know, that isn't the point. The witness may be qualified. Just as I've already said before, let me ask you one or two questions. I don't want this to be embarrassing. I can't in other words, I would like to see my decision, whatever it is, stand and not be over-ruled by some Court, by telling me I had no right to do what I did. So, that is why I am being extra careful. How many books would you say you've read in your life?

A. Well, I try to read an average of four a year.

By Mr. Kent:

Q. Are those hard cover books?

A. They definitely are.

Q. How about paper bound volumes?

A. I won't say we haven't purchased them. Perhaps I have purchased a couple. One of them happens to be one [fol. 264] that Mr. Wolfe and I refer to many times, on How to win friends and Influence People. We belong to the Book of the Month, so we receive many of our books through that source.

The Court: I think I know exactly what she would testify, if she were permitted to testify.

Mr. Kent: I have no further questions.

Mr. Robbins: No questions.

The Court: Very well, that is all.

(Witness excused.)

Bishop George W. Baber, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct examination

By Mr. Kent:

Q. Bishop Baber, what church are you affiliated with?

A. I am the Presiding Bishop of the African Methodist Episcopalian Church in this area.

Q. That includes the area of the City of Detroit, does it?

A. That is right.

Q. How far does it extend beyond the limits, jurisdictional limits of the City of Detroit?

A. I cover six states but—my residence is here.

Q. Does it also include the State of Michigan?

A. Entirely, surely.

[fol. 265] Q. Now, Bishop Baber, what is your educational background, please?

A. Well, my college and seminary work resulted in Bachelor of Divinity Degree.

Q. Where did you receive that?

A. Wilbur Force University, Xenia, Ohio.

Q. Did you do any post graduate work?

A. I shopped about.

Q. What does that mean?

A. I mean I attended refresher courses and seminaries, and so forth and so on.

Q. You have been taking post-graduate work practically ever since you have been out of regular school?

A. That is right.

Q. Have you made any particular studies in the field of literature?

A. Nothing more than the general survey that we follow through in our college seminary work.

Q. Have you made any study of literature with relationship to your present work, as Bishop?

A. Oh, yes.

Q. Was—what have your studies embraced?

A. Well, I engage in general reading, a constant avocation.

Q. About how many books would you say you read during the period of a year?

A. Oh, I presume around thirty, of various types.

Q. It's not confined to the field of religion?

A. No.

[fol. 266] Q. Nor the field of politics, nor the field of sport? You say it is general?

A. General reading, sir.

Q. Have you ever had occasion to read any of the Pocket Book editions of books?

A. Not very many. I occasionally have picked up one at the station on my way to a train.

Q. Now, I will show you People's Exhibit No. 1, Bishop Baber, and ask you particularly if you have read People's Exhibit No. 1?

A. Yes, I have read this.

Q. And when did you read that book, Bishop Baber?

A. In the last week.

Q. Now, based upon your—you say——

The Court: Wait, let me ask a couple of questions, Have you ever been asked, Bishop, to pass an opinion on the literary value of any book?

A. No.

The Court: You never have?

A. No.

The Court: Have you ever taught on literary subjects?

A. No, I have not taught literary subjects, censored pictures, and so forth.

The Court: You have censored pictures?

A. Yes, by invitation, through the Counsel of Churches in Detroit.

The Court: Do you wish to cross-examine him on his qualifications?

[fol. 267] Mr. Robbins: Your Honor please, I don't believe the witness has been qualified as a literary expert.

The Court: In this sense, that he's at the head of a church. He's read extensively, as high as thirty books a year. I think he has some ability as a literary expert.

Mr. Kent: I think a man need not necessarily make public reviews in newspapers or in periodicals in order to qualify as a literary expert.

Mr. Robbins: I would like to cross-examine.

The Court: Very well.

Cross-examination.

By Mr. Robbins:

Q. Bishop Baber, you told us you had never taught literature in any sense or spent any particular time in the analysis of literature, is that correct?

A. Well, I have approved curricula for the seminary and I happen to be President of our Seminary Board, and I approve literature that's submitted for the students to use in their courses.

Q. Is that mostly in connection with the subjects of divinity?

A. Largely, but we also include general subjects for reference and so forth.

Q. Have you made any studies of the novel?

A. Not special study.

[fol. 268] Q. Have you made any study of the realistic school of writing, come down from Zola through the realistic field of writing?

A. I have read much in that field, general reading.

Q. Amongst the books you have read have been in that field?

A. Yes, I read current literature.

Q. And have you written, have you ever instructed or given any analysis of the various types of novel writing?

A. Specifically not.

Mr. Robbins: I have no further questions and I press my objection, your Honor, that I do not believe the witness is a qualified literary expert, However, else he is accomplished in the divinity subjects.

The Court: Your objection is over-ruled.

Re-Direct examination.

By Mr. Kent:

Q. Bishop Baber, from your reading of the book "The Devil Rides Outside," have you formed an opinion as to the literary value of that book?"

A. I think it is typical of current realistic literature, and it has value, it indicates that the writer has a good mind

and pursued his subject. When I say "good mind" I mean a good background of training, and he pursued his subject in an interesting fashion.

Q. Do you have an opinion as to whether or not the book, the literary value would have been destroyed if some of [fol. 269] those passages were removed or toned down or deleted?

Mr. Robbins: If your Honor please, I object to that question. I don't think it is competent or relevant and I do not think this is—the question is literary value of the work. If it has literary value, I don't think the incidental questioning about the deletion of any particular passage is competent or relevant.

The Court: Being consistent with my former ruling, you found some passages in there that standing alone would be obscene?

A. Yes sir, I think some passages border on salacious literature.

The Court: Well now, I can see your point, he's not qualifying. I am not taking that answer in the idea that he is posing as an expert.

A. No.

The Court: On the matter of obscenity nor salacious literature. He has, as I said, received his qualifications and it goes as to the degree rather than the admissibility, so the Court will ask you, do you think that the passages could be so eliminated, so rephrased without effecting the literary value of the book?

A. May I answer it this way, Judge, it might help me.

The Court: Very well.

A. It seems to me that the emphasis, the descriptive emphasis is too great on——

The Court: On the sensual?

[fol. 270] Yes.

The Court: In other words, you feel it was not necessary, in order to make the book, the book that you think that it is?

A. That is right.

Mr. Kent: I have no further questions.

Mr. Robbins: If your Honor please, I should—I didn't want to interrupt your Honor's further series of questions,

but I want the record to show that I have objected to the whole line.

The Court: Under the theory that he is not an expert?

Mr. Robbins: And also as to whether the necessity of deleting certain——

The Court: Whether it would effect the literary—well, I hold that because certainly some deletions that have been shown to the Court this far, that this business of pregnancy was deleted for the English audience. Step down.

(Witness excused).

The Court: If it becomes necessary that you have to get some one who is not here, you've heard my ruling, I have to comply with the Supreme Court's ruling that you must have some one that can testify to the literary value, whether or not those phrases were necessary in that relationship. Now, we have very many people who are inter- [fol. 271] ested in youth, and we have very many people who probably could testify that they feel this is obscene and shouldn't be in the possession of youth, and, personally, I would like to hear from them, because I may be prejudiced without knowing it. As I said, we're all the result of our training and background.

Mr. Kent: That is right, your Honor.

The Court: But the Supreme Court, I think, has been so definite that that's a matter that I will have to shoulder later rather than accept the testimony of others. Do you want to recess to determine how many literary people you have and how many you don't?

Mr. Kent: We have already done that, your Honor. We have been unfortunate insofar as the Professors of literature whom we do intend to bring is giving final examinations today and will be available to-morrow. He is having a substitute teacher take his place, take his classes to-morrow so that he can be here. He is an eminent literary expert in his field. Rather than labor the situation with your Honor, I've decided not to call any further witnesses. I am in the same position as your Honor. I feel that they ought to be heard, but along with your Honor, I don't want to do violence to the prior decisions of the Supreme Court regarding the subject. Therefore, I'd like to beg the Court's indulgence.

The Court: I told you people, that's why I got you back there to talk this matter over. I think that it would do very little good to allow all of them to testify, then have the [fol. 272] opinion come down and say the Recorder's Court Judge was in error in permitting them to testify, and we'd be right back where we started. Rather than do that, I am going to take that position, that they must have some literary background and then, of course, the question of whether they are experts or not will be determined by the Court, and then as to their standing, and so forth, that is a matter of degree and not of admissibility of their evidence.

Mr. Kent: Thank you, your Honor. May we adjourn until to-morrow morning?

Mr. Robbins: I certainly am not going to object to the Prosecutor's schedule, will this be his last witness?

The Court: That, I am not going to limit, I never do. He may find a professor to-night that he wants to use to-morrow and I am not going to stop him.

Mr. Kent: We are not going to interfere too much in keeping you from getting home.

The Court: I understand you have a very important appointment with your family Wednesday. We are going to try to finish this to-morrow. I don't mean the Court's decision.

Mr. Robbins: I understand that.

The Court: I may want to file a written opinion of my findings.

Mr. Robbins: I was addressing myself only to the finishing of the testimony.

The Court: Very well.

[fol. 273] The Court: (Continuing) Then you have no further witnesses at this time?

Mr. Kent: No, your Honor.

The Court: Very well.

The Court as far as this case is concerned is adjourned until 9 o'clock to-morrow morning.

(Court adjourned until 9 a.m., July 13, 1954.)

[fol. 274] July 13, 1954.

The Court: Whenever you are ready, Gentlemen, you may proceed.

MILDRED SEITZ, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct examination.

By Mr. Kent:

Q. What is your full name?
A. Mildred Seitz.
Q. That is Mrs. Seitz?
A. Mrs. Harry Seitz.
Q. And where do you live, Mrs. Seitz, please?
A. I live on Lawrence Avenue in Detroit.
Q. Now, Mrs. Seitz, where did you go to school?
A. I went to school out of the State of Michigan, in the State of Missouri. High school in Kansas City and University of Missouri in Columbia.
Q. What did you study?
A. I studied largely, my whole field was English and Journalism.
Q. And what degree did you receive?
A. I received a Bachelor's Degree.
Q. In English and Journalism?
A. Yes.
[fol. 275] Q. And did you do any post-graduate work?
A. No, not any toward a degree. I took some at Wayne after I was married and came to Detroit, but never toward a degree.
Q. Now, did you do anything with your education?
A. Oh yes. I taught school, you know.
Q. How long did you teach?
A. I taught eight years.
Q. Where did you teach?
A. In Kansas City.
Q. What did you teach?
A. I taught English, American and English literature and composition.

Q. Are you a housewife now?

A. Yes.

Q. Do you do anything other than taking care of your home and your children?

A. Oh yes. I do a great many other things outside, that is to say, did you want me to be explicit?

Q. yes, please.

A. I do what we usually are calling club work in our particular area, and I——

Q. That is all right, don't let Mr. Robbins——

A. He disconcerts me when he is ready to leap to his feet.

The Court: Just a minute. You will be very disconcerted then, because he has that right.

A. All right.

[fol. 276] The Court: So just——

A. I thought I said something entirely wrong, your Honor.

The Court: You will be told if they think so, don't worry about that.

A. All right. Since my marriage and since I've had the children, I have done a good deal of substitute teaching in the City of Detroit, always in the field of English.

Q. You presently are the President, are you, of the National Counsel of Catholic Women?

A. Yes.

Q. Now, Mrs. Seitz, have you read the book "The Devil Rides Outside?"

A. Yes, I have.

Q. Which is People's Exhibit No. 1?

A. Yes, I have.

Q. Now, based upon your experience and your literary education, have you formed an opinion as to the literary value of the work, "The Devil Rides Outside?"

A. I think I have.

Q. Either you have or you have not.

A. Yes, I do.

Q. Would you give the Court, please, Mrs. Seitz, your opinion, literarily, of the book "The Devil Rides Outside?"

A. I think the book contains merit in this way. It is very graphically descriptive. It is built like the average modern

novel, it has tremendous rises and fall of climax, both in [fol. 277] description and in actual recounting of events.

Q. Now, do you feel, based upon your experience and background in literature, do you have an opinion as to whether or not any changes or deletions might be made in the work that would effect its literary value?

Mr. Robbins: Your Honor please, I should like to object to that question. I reiterated this objection on other occasions. I believe this is a matter beyond the witness's competence as to whether other changes might have been made in the work, the question is as to the literary value of the work itself.

The Court: The question of the literary value of the work has already been answered.

Mr. Robbins: I appreciate that. And I think the further question as to whether the author might have made changes is——

The Court: You have in your possession, I wondered why you didn't use it yesterday, a list of excerpts that has been offered in evidence. If the witness can examine those excerpts, the witness can tell, determine if she is qualified.

Mr. Robbins: With your Honor's indulgence, may I also record an objection to the examination of the excerpts of this book?

The Court: The excerpts are in evidence.

Mr. Robbins: This is as to my objection to the excerpts in evidence.

[fol. 278] The Court: That's already in evidence and if I recall there was no objection made when they were placed in evidence.

Mr. Robbins: Yes, there was.

The Court: Very well.

Mr. Kent: Of course,——

The Court: The general fact that it should have been taken as a whole.

Mr. Kent: Rather than contained.

The Court: Very well.

By Mr. Kent:

Q. Mrs. Seitz, I will show you People's Exhibit No. 2, being excerpts taken from the book "The Devil Rides Outside," and I will ask you to look at this Exhibit, Mrs. Seitz. Examine them for a while and tell us whether or not you have an opinion as to the literary value of the book as far as those excerpts are concerned.

A. I don't understand. I read these very closely, you know. I have read them.

Q. You have read them previously?

A. Yes.

The Court: They are all contained in this book, as I understand?

A. Yes.

By Mr. Kent:

Q. Those are excerpts that have been taken from the book itself. Do you have an opinion as to whether or not those excerpts are necessary for good continuity of the literary value of the book?

[fol. 279] A. Yes, I have.

Q. What is that opinion?

A. Well, I think that they actually spoil the book.

Q. Do you feel that they are obscene?

A. I do.

Mr. Robbins: I object to that question.

The Court: Objection sustained, and the answer stricken. As much as I know what the answer is going to be, I still can't have—in other words, I am Judge and Jury on this.

Mr. Kent: All right, I am sorry, your Honor.

The Court: That is all right, I don't think it was intentional. Just one of the natural things to ask.

By Mr. Kent:

Q. Do you feel that, based on your opinion of the general overall literary value of the book, do you have an opinion as to whether the intimate details of the sex act as depicted in the book, add to or detract from the literary value? Do you?

A. I was waiting.

Q. You were waiting for Mr. Robbins?

A. Yes.

Q. You were anticipating?

A. I would say that they detract.

Q. Do you feel that the literary value would be destroyed if the details were not so graphic?

A. No, I do not think so.

[fol. 280] Q. Do you have an opinion as to whether any changes might effect its literary value as a whole?

Mr. Robbins: Your Honor please, I didn't want to interrupt at each time. This line of questioning as to what changes should or should not be made, I should like to record my objection. The witness should be competent to testify as to the book as a whole, as to the literary work, but the changes that should be made, I think that is beyond this witness's competence, or whether any witness can testify as to what an author should have or should not have done in any particular instance.

Mr. Kent: The testimony was put in by the two professors, that any changes would materially effect the literary value of the book. We certainly should be able to show by other competent witnesses whether that is or is not so.

Mr. Robbins: That was on cross-examination and this is the Prosecutor, what the witness in her own opinion thinks should be the changes in the book.

The Court: I don't think that was exactly the question.

By Mr. Kent:

Q. Now, Mrs. Seitz——

The Court: I think we will have a ruling on that, I think I am going to sustain that objection with the understanding that the other testimony she gave is admissible, and is in evidence. She said she doesn't think that part is necessary to make the book a good book.

[fol. 281] Mr. Kent: All right.

The Court: And that she doesn't think that he had to go into the details in order to keep it a good book, is that your testimony?

A. Yes, that is right, your Honor.

By Mr. Kent:

Q. One further question, Mrs. Seitz: You say you taught English for a period of eight years?

A. Yes.

Q. Was that high school English that you taught?

A. Yes.

Q. Now, based upon your experience in eight years as an English teacher in high school, do you feel, or have you an opinion as to whether or not the students of high school age would be able to appreciate the literary value of this book?

Mr. Robbins: If your Honor please, I respectfully object to that question. The witness is being asked for an opinion as to whether other students would appreciate the literary value of this book. I think the witness should be confined to her own opinion as to the literary value of the book, not as to whether other people might appreciate it.

The Court: We have in the Statute, wrongfully, according to you, rightfully, according to the Prosecutor, the phrase there that it effects the morals of youth. I am going to permit the answer.

A. May I hear the question again, please, Mr. Kent?

By Mr. Kent:

Q. Do you have an opinion, based upon your experience [fol. 282] as a high school teacher of English, as to whether or not high school students would be able to appreciate the literary value of the book "The Devil Rides Outside?"

A. I think they wouldn't be able to appreciate the literary value.

Mr. Kent: May I approach the bench, please, with counsel?

The Court: All right.

(Discussion off the record.)

Mr. Kent: No further questions, Mrs. Seitz. Perhaps counsel would like to question you?

Mr. Robbins: Yes, I would like to cross-examine.

Cross-examination.

By Mr. Robbins:

Q. Mrs. Seitz, how long ago was it that you taught high school?

A. I would say about twenty-eight years.

Q. How long ago?

A. Twenty-eight years.

Q. Twenty-eight years ago?

A. Yes.

Q. In other words, you have done no teaching of English literature or American literature in the past twenty-eight years?

A. I have substituted, as I explained before, in Detroit schools.

Q. In grade schools?

A. No, high schools.

[fol. 283] Q. In the past——

A. Yes, I am currently on the substitute list.

Q. You started off your direct testimony by saying that the book had some literary value?

A. I can see, yes, that it has.

Q. And you found objection to the fact that some of the passages in it, in your opinion, were unnecessary, is that correct?

A. Yes. May I correct your remark as so? I would say many.

Q. Many?

A. Many.

Q. Did you end up, even after reading those passages, still thinking the book had some literary merit?

A. I rather doubted it at the end, after reading the whole, do you see?

Q. I appreciate that, but you mentioned—you commenced your testimony by giving an opinion and that is after reading all the excerpts that the book had literary merit.

A. Yes, it does.

Q. You felt it had been detracted by these passages?

A. Yes.

Q. You can see, don't you, the way any particular author

creates a book, there is a difference in the way different people write, no one can write the same.

A. Oh, yes, correct.

Mr. Kent: I object to that.

The Court: I will permit it on cross-examination.

[fol. 284] By Mr. Robbins:

Q. Some people use graphic detail to an extent greater than others, is a matter also of some artistic judgment?

A. Yes, if you are going to use graphic detail to mean something that I wouldn't quite describe that way.

Q. In other words, you feel you would describe it differently?

A. And many others as well, yes, I would certainly, yes.

Q. Now, did you recognize any ethical or serious purpose in this book, in the development of the book?

A. I tried hard to and I saw certain commendable serious things.

Q. Coming back to the excerpts, did you read these excerpts before you read the book?

A. No.

Q. You read the book first?

A. Yes.

Q. When did you read the book?

A. Just this past week, thoroughly.

Q. What date did you start?

A. Actually, I started the book the day of the trial, what was that? The opening day, Wednesday.

Q. Yes.

A. I finished it completely on Sunday.

Q. You testified on direct examination that you had studied this list of excerpts which is People's Exhibit 2, rather closely?

A. Yes.

Q. When did you see those?

A. I saw them on two occasions, I saw them on Wednesday and I saw them on Sunday.

[fol. 285] Q. Wednesday is the same day the trial started?

A. Yes.

Q. At that time you hadn't read the book?

A. I didn't read these, I simply leafed through them here and there, and then I laid it aside to read the book.

Q. Then on Sunday, you studied them closely?

A. Yes.

Q. After seeing these excerpts when you leafed through *him* the first time on Wednesday, did you lay them aside?

A. I didn't even keep them. I returned them to—well, to some gentleman who had originally sent them to me here in Court.

Q. Who sent them to you?

A. I got them from Inspector Case, and the book.

Q. By mail?

A. No, by messenger.

Q. Both together?

A. Yes.

Q. In studying these excerpts,——

The Court: She didn't say she studied them.

Mr. Robbins: Yes, she studied them on Sunday.

The Court: She said she read the book and then studied——

By Mr. Robbins:

Q. Am I wrong?

A. I read part of the book Wednesday and leafed through these on Wednesday. On Sunday I finished the book and gave these a close examination, right.

[fol. 286] Q. Is that right? I used the word studied in place of close examination. In closely examining these excerpts, Mrs. Seitz, did you in each instance make some attempt to correlate them with the book?

A. No, I guess I didn't actually. But I would like to explain what I mean, but——

Q. I'd be very glad to have you explain. I am not trying to cut you off or put words in your mouth.

A. I meant I didn't, I couldn't connect them with the book, actually.

Q. Well, they actually——

A. I knew they were there, yes, but I couldn't read them separately, and it didn't bring back any of the book, if you know what I mean.

Q. You had just finished the book?

A. It didn't bring back the book. All I could think of were these individual excerpts.

Q. Perhaps in studying or closely examining these excerpts, it gives you an over-exaggerated or over-emphatic idea, aspect of the scenes described, would you say that?

A. I doubt it.

Q. If you were unable to bring them back to the scene of the book?

A. No, I knew they were in the book. You are not quite representing what I mean. I knew they belonged to the book. I mean to say, these were so graphic, that thinking of these incidents was so stimulating, that I could scarcely remember the serious tone of the book.

[fol. 287] Q. Now, you recognize what the conflicts of this book were, the conflicts that were portrayed?

A. I do, indeed.

Q. Would you say this showed a study on the part of the protagonist of the conflicts between the spirit and the flesh to some extent?

A. To a great extent.

Q. And describing the temptations of the flesh, would there be any latitude, in your opinion, for the recounting of fleshly episodes?

A. Well, what exactly do you mean by latitude?

Q. An author's leeway in giving some recounting of fleshly episodes to portray the temptations of the flesh as against his will to have the spirit prevail?

A. You say, do I—please give me the question again?

Mr. Robbins: I will have the stenographer give it.

(Last question read.)

A. To that, I would say that all authors are given a certain amount of leeway within the bounds of good taste.

Q. Good taste you recognize, Mrs. Seitz, is a rather individual opinion?

Mr. Kent: I will have to object to that, may it please the Court, now invading your province.

Mr. Robbins: I believe this is cross-examination of the witness's opinion.

The Court: He wants to bring anything in, it's not your

province. If he is cross-examining, he is cross-examining so that the Court can determine whether, how much of [fol. 288] the witness's testimony I should believe and how little I should believe. If he feels it is important, but I am not going to let any one open the door to being an expert on obscenity.

Mr. Robbins: I am not——

The Court: No, go ahead. I sustained your objection.

Mr. Robbins: I forgot my own last question.

(Last question read.)

A. I suppose it can be considered relative.

By Mr. Robbins:

Q. Well, I am not trying to fence, but your concept of good taste might very well differ with mine or with some one else's, is that correct?

A. I think it could, but it seems to me there are basic things which right-thinking people all agree to.

Q. Is there one pattern for right-thinking people, one intellectual pattern as to what they consider to be good taste? Is there that fixed a pattern?

A. You say an intellectual pattern, I think not.

Q. Let me put it this way. You do concede that an artist has a certain amount of leeway in portraying incidents in the way he feels is the most emphatic to carry his point?

A. Yes, I think that's quite right.

Q. You also recognize that not every artist and not every person with imagination, nor every reader, would have the same approaches to the properties of any particular incident, or the recounting of any particular incident, there [fol. 289] would be no uniformity necessary?

A. Necessarily, yes.

Q. So the divergencies that would be employed would be the rule rather than the exception?

A. Divergencies, meaning differences?

The Court: Different methods of portraying?

A. Yes, I think that they would.

Mr. Robbins: I have no further questions.

The Court: Now, when you said after reading the book

there was some doubt as to the literary value, then you say at the start you felt it had some literary value.

A. May I explain?

The Court: Did you mean that after reading all of these excerpts, while in the book, you were not—you were in doubt as to the author's sincerity of purpose?

A. No. May I say what I did say? I thought that the episodes recounted so graphically as they were and so stimulating as they were, obscured the serious purpose of the book.

The Court: Very well. Anything else, Mr. Prosecutor?

Mr. Kent: Nothing, Mrs. Seitz, thank you.

(Witness excused.)

[fol. 290] Genevieve Lola Schoonover, sworn by the Clerk on behalf of the People, testified as follows:

Direct examination

By Mr. Kent:

Q. Would you state your full name, please, Ma'am?

A. Genevieve Lola Schoonover.

Q. Is that Mrs. Schoonover?

A. It is.

Q. Mrs. Schoonover, did you go to school here in Michigan?

A. No, I did not.

Q. Where did you go?

A. In Indiana.

Q. How far did you go to school there?

A. I went to the University of Indiana and received a Bachelor's Degree at that Institution.

Q. In what Department?

A. Latin and English.

Q. And did you go to any other schools than the University of Indiana?

A. No. I did further graduate work.

Q. Where did you do your graduate work?

A. At the University of Indiana.

Q. What was your graduate work done in?

A. In the same subjects, Latin and English.

Q. How long did you attend the graduate school, that is, from time to time?

[fol. 291] A. Two terms. It was on the term system then.

Q. Did you have any other graduate work or post-graduate work at all, in the field of English?

A. No, no other work in the field of English.

Q. Now, what was your major occupation during recent years, Mrs. Schoonover?

A. The recent years?

Q. Yes.

A. Well, I am a housewife primarily. And I also have taught English.

Q. Where did you teach?

A. Well, this is an odd thing. I have to explain it. To groups of business women here in Detroit.

Q. And for how long a time did you teach?

A. Twenty years. I still have two of the groups and this is the twenty-fourth year.

Q. In what school system or curriculum is your teaching done?

A. It's not a school system. It was a private endeavor entirely, organized by the Universal Guild.

Q. I see. You say you are still teaching there?

A. Yes sir.

Q. Now, have you done any book review work?

A. Yes, I have reviewed books for the last——

Q. Did you review for any particular organization?

A. Well, I have reviewed books, of course, for these groups of business women, and I have reviewed books for clubs, and for the publishers.

[fol. 292] Q. And have you written any reviews, have you written them up, or merely delivered them verbally?

A. Merely delivered them.

Q. And have your reviews been in the field of the modern day novel?

A. Yes sir.

Q. About how many books have you reviewed, Mrs. Schoonover, in the past ten years?

A. Well, I average about twenty-five books a year, between twenty-five and thirty, so that would be the figures.

Q. Now, Mrs. Schoonover, have you read People's Exhibit 1, "The Devil Rides Outside?"

A. Yes sir, I have.

Q. The book by John H. Griffin?

A. Yes sir.

Q. Based upon your literary education, experience and background, have you formed an opinion as to the literary value of the work?

A. Yes, I have.

Q. And what is that opinion, Mrs. Schoonover?

A. I think that the book has a certain amount of literary value.

Q. Have you read the book from cover to cover?

A. Yes sir, I have.

Q. Do you have an opinion as to whether or not the detailed sex acts detract from the work?

Mr. Robbins: If your Honor please, I should like at this time again to record my objection to that question.

[fol. 293] The Court: Very well. You have an Exhibit in evidence.

Mr. Kent: I will change the form of the question.

The Court: I take it that Mrs. Schoonover could examine those, just a cursory examination, and determine whether they are some of the things she recognizes as having been in the book.

By Mr. Kent:

Q. Mrs. Schoonover, I will show you People's Exhibit No. 2, and ask you, have you ever seen these excerpts before?

A. No sir, I have not.

Q. You have never seen them before?

A. No sir.

Q. I will ask you to look through them and read them as much as is necessary, before I ask you the next question.

Mr. Robbins: While the witness is reading, your Honor, I would like to object to the pointing out the excerpts of this particular book to the witness, when the book in my

opinion should be viewed as a whole instead of by these excerpts.

The Court: The question is, did she recognize these particular excerpts as having been in the book. The reason for the question is purely for the purpose of identification. Then, the next question may be the one that's objectionable. I don't see anything objectionable so far.

Do you recognize those as being excerpts from the book?

[fol. 294] A. Yes sir.

The Court: Very well, proceed.

By Mr. Kent:

Q. You say you do recognize those excerpts as being parts contained in the book?

A. Yes sir.

Q. Now, may I address your attention, Mrs. Schoonover, to Exhibit No. 2, that marked page 207, numbered Excerpt No. 48, ask you to read 48, 49, up to the notation 50, page 210.

The Court: If you recall it, read it enough to identify it to yourself.

A. Yes sir.

Q. You recognize that, do you?

A. Yes sir, I do.

Q. Now, do you feel that that is a work of literary value?

Mr. Robbins: Your Honor please, I now object to this question. I think it is again treating this work not as a whole but by particular excerpts and I think——

The Court: I don't know why he's changing his method. He had a good way of proceeding before. Do you think this would add or detract at all from the literary value of the book, if it were changed?

A. This particular incident, I do not think will do so. It's one of the least objectionable.

The Court: Now, you've read all these excerpts in the book as you read the book?

A. Yes.

[fol. 295] The Court: Do you believe that the deletion of any of those would be materially, or the changing of the language and the minute description of any of those would materially change the value of the book as a literary effort?

Mr. Robbins: My objection.

The Court: Your objection is on the record.

A. No, I do not think it would change the literary value of the book.

The Court: In other words, you feel that this intimate, although stated in high-sounding phrases, this intimate detail of the sex act and sensual passions and desires is not necessary to the value of the book?

A. No sir, I do not.

By Mr. Kent:

Q. One other question. Mrs. Schoonover, you stated that you did some book reviewing and recommending for the libraries, did you say that?

A. No sir, not recommending for the libraries, just book reviewing for the libraries.

Q. Would you ever recommend books to the libraries?

A. Yes sir, I have.

Q. Here in town, the Detroit Public System?

A. No sir, in the suburbs, Royal Oak, Ferndale.

Q. Were you on a committee to pass upon work that had literary merit?

A. No sir, I was not.

Mr. Kent: I see. All right, thank you, Mrs. Schoonover.

[fol. 296] Cross-examination

By Mr. Robbins:

Q. Mrs. Schoonover, are you a member of any organization in this community which has a purpose to inspect or pass opinions on current literature at newsstands?

A. No sir, I am not.

Q. You are not affiliated with any club activity in that connection?

A. No sir.

Q. Now, the one particular passage that the Prosecutor pointed out to you, you read while you were on the stand, is that right?

A. I read it briefly, just enough to recall my—I know where it is.

Q. I didn't mean to suggest that you hadn't read it before, but I am trying to identify it, that is all.

A. Yes, I identified it.

Q. Well, let me put that aside a moment. You gave at the outset of your testimony that the book—an opinion that the book had literary merit?

A. Yes, it has.

Q. Did you think it had a serious purpose?

A. I am not sure. When I concluded the book, I thought when I first began to read it, it did have, but if I may state this, after I read each—after I read each book that I review, I close the book and I try to summarize to myself the purpose of the author in writing it, and whether he has confused the issue with his writings, and I felt at the end that [fol. 297] he had definitely confused it.

Q. Well, did you recognize that the book concerned a conflict of some sort within the author?

A. Yes, indeed.

Q. Ultimately, the conflict was resolved in the way which the flesh—the spirit prevails over the flesh, is that correct?

A. Yes sir.

Q. Would you say that the book, to a great deal, recounts some of the earthy and fleshly temptations of the author?

A. Very definitely.

Q. Does it also give a substantial amount of his growing towards piety and growing towards the will of God, is that a theme which runs through the book?

A. The theme does run through the book, but it is constantly over-shadowed in its development.

Q. Well, ultimately——

The Court: Over-shadowed by what?

A. By these incidents that are constantly dragged in, so that when you close the book——

The Court: You mean these incidents?

A. The graphic descriptions that are contained in this Exhibit that I just looked at.

The Court: Very well.

By Mr. Robbins:

Q. Would you say that in the use of this novel, the use of a novel of the conflicts between perhaps the worldly [fol. 298] temptations and the growth of the spirit, that

some sort of emphasis might be required in depicting the worldly temptations?

A. Yes, there has to be some emphasis.

Q. Would you say that the amount of emphasis that any particular author might employ, would be different, depending on the author?

A. Yes.

Q. Would you say that the amount of accord that such emphasis registers on the part of a reader might be different on the part of different readers?

A. Yes, it has to be.

Q. Would you say that this book had any merit as a social document or a literary work which was honest and intent in treatment?

A. The answer to the first question, please, first. I do not think it has any merit as a social document.

Q. Would you say that it is honest and intent?

The Court: I think the witness has already answered that.

Mr. Robbins: She answered only the first question.

The Court: No, she said she thought it was honest and intent because—but because of so many of these excerpts, is that it?

A. Yes sir.

By Mr. Robbins:

Q. You are definitely testifying now, when you finished the book, you do not think it is honest and intent?

A. I am afraid I do not.

[fol. 299] Q. Do you think it is honest in its treatment?

A. You mean in attempting to develop his purpose?

Q. Yes.

A. Well, there are two ways to answer that question, it seems to me.

Q. I should be glad to have both.

A. According to what the author is attempting to do, as I believe, that's purely my own opinion, he has worked it out honestly, but from the reader's standpoint, from the standpoint of a discriminating reader, I would say he has not done so.

Q. In other words, you value yourself as a discriminating reader, is that correct?

A. No, I won't flatter myself by saying that, but I think I read with a little more discrimination than the average person.

Q. I am not trying in any way to trap you, Mrs. Schoonover, but I mean you have—you have a good respect for your own reading discernment, is that correct?

A. Yes, sir.

Q. As far as your personal opinion is concerned, you felt that the author over-emphasized the fleshly struggles in this work?

A. Yes, sir.

Q. To a degree, you say, according to your opinion, that marred the conflict he was trying to portray?

A. Yes sir.

Q. Could this be viewed as an opinion on your part that [fol. 300] the author wasn't aptly or most cogently describing the conflict? In other words, you feel that he is not quite a great author in the description of this conflict?

The Court: She didn't say that.

Mr. Robbins: I am trying to ask if she would say that, I am not trying to suggest she said that.

A. I think I will have to have that statement.

Mr. Robbins: Let me withdraw it.

By Mr. Robbins:

Q. I am trying to develop this point. You said before you recognized there are differences in the opinions on the part of readers and differences in the methods employed by authors.

A. Yes sir.

Q. Your opinion as a reader may be that the author has not well portrayed or perhaps has overly emphasized the certain aspects of a conflict?

A. Yes sir.

Q. By that, you mean he detracts from the work rather than adds to it?

A. Yes sir.

Q. You could still feel, however, despite this detraction

and despite the difference you have with his use of the emphasis, was that it was a sincere and honest literary effort?

The Court: Why don't you ask those two questions separately?

Mr. Robbins: I will try to separate them, your Honor.

[fol. 301] By Mr. Robbins:

Q. With these differences in mind and differences in the divergencies, perhaps, in opinion, is it possible that you might feel that despite that, the work might still be a literary effort, a sincere literary effort?

The Court: Any writing is a literary effort.

A. Yes sir.

By Mr. Robbins:

Q. A sincere, a literary effort of merit, is that correct?

A. It is a literary effort, I think. I am not sure about the sincerity. I would have to read that book again.

Q. You would like to read it again?

A. No, I don't want to read it again. But I would have to say that I'd have to read it again before I could be sure, just as I do most books that I review.

Q. Is it your testimony now that you would have to study it further before you evaluated that problem?

A. Yes, I think it is, that I can't say definitely that it is not a sincere effort on his part to portray what he's attempted to do, according to his likes.

Q. You were asked on direct examination whether you had formed an opinion whether this was a sincere literary effort of merit.

Mr. Kent: The word "sincere" was never used on direct examination.

By Mr. Robbins:

Q. Whether this book had literary value or merit.

A. As I stated in the beginning, it has some literary merit.

[fol. 302] Q. When you say "some"——

A. Yes.

Q. It is very hard for any one to evaluate "some." I mean, I don't want to be left in a field where perhaps a time table which is a literary effort has some value of the description of the trains that run on the railroad.

A. In other words, the conflicts as it is described in different passages, is philosophy as it develops, as it goes along, as it is colored by his life in the monastery, I think that has some literary merit, especially the philosophical passages.

Q. Treating the book as a whole, would you say that on the whole, in viewing its dominant notes——

The Court: Wait, on the whole, or in its dominant notes? You see, you put two questions there.

Mr. Robbins: I will rephrase the question.

By Mr. Robbins:

Q. Considering the work as a whole, would you say that, viewed as a whole, this book is of literary value?

A. No, not as a whole.

Q. You wouldn't. You say just certain excerpts have literary value?

A. Yes, I—no, I wouldn't qualify quite that way. That is too distinct a division. In other words, I was trying to state the things that should stand out—that stood out in the evaluation. That is, those particular passages of philosophy and life in the monastery, and so forth, how it influenced his life. I thought that was well developed and well done.

[fol. 303] Q. Would you say the conflict of this author's life was well developed and well done?

A. In certain details, yes.

Q. Would you say that a great number of the characters were well drawn?

A. Yes.

Q. Would you say that there was an adequate and interesting depiction of the scenes in the South of France?

A. As far as I know, yes.

Q. Would you say there was an interesting and stimulating recounting of the life of the monk, Benedictine monks and their principles?

A. Yes sir.

Mr. Robbins: I have no further questions.

Re-Direct Examination

By Mr. Kent:

Q. What would you say was the dominant theme of the book?

A. Well, the dominant theme, of course, of the book as he portrays it, is the conflict between sensuality and right living, the life of the spirit.

Q. Did I understand you to say, Mrs. Schoonover, that you felt the detailed intimacies and the vividness described and found so descriptive in the book obscured the whole meaning of the work?

Mr. Robbins: We've been over this, your Honor.

[fol. 304] The Court: I think that's been covered. The Court has listened to her testimony very carefully.

Mr. Kent: All right, that is all, Mrs. Schoonover.

(Witness excused.)

Professor Charles Carroll Hollis, sworn by the Clerk on behalf of the People, was examined and testified as follows:

Direct Examination

By Mr. Kent:

Q. Your full name is what, please?

A. Charles Carroll Hollis.

Q. That's spelled H-o-l-l-i-s, is that correct?

A. That is right, sir.

Q. Now, you are a Professor of English Literature, are you?

A. Yes, at the University of Detroit.

Q. At the University of Detroit?

A. I should say an Associate Professor.

Q. Now, where did you receive your education, Professor Hollis?

A. I did my undergraduate work at Marquette University in Milwaukee. Went to the University of Wisconsin and also St. Louis University and finished my graduate work at the University of Michigan in Ann Arbor.

Q. Was all that in the field of English literature?

[fol. 305] A. English and American Literature, yes sir.

Q. How long have you been teaching at the University of Detroit?

A. Since 1938.

Q. And have you been there continuously until now, 1954?

A. Yes, as an instructor first, and then as an Assistant Professor, and now as Associate Professor.

Q. In the English Department, is that correct?

A. Yes.

Q. Have you done any book review work, Professor Hollis?

A. Yes, I do, for different magazines and literary articles that are in the nature of book reviews on American literary figures.

Q. And have you ever concerned yourself with the modern American novel?

A. I teach a course in the contemporary novel. My major field is American literature and the course always ends up with contemporary literature.

Q. Now, I will show you, Professor Hollis, People's Exhibit No. 1, being a Pocket Book edition of "The Devil Rides Outside" and ask you whether or not you have read that book?

A. Yes, I have, sir.

Q. And have you read it in this form as it appears here, in the Pocket Book edition?

A. Yes sir.

Q. Is that the only edition which you have read?

A. Yes, it is, sir.

[fol. 306] Q. Now, have you formed an opinion, Professor Hollis, as to the literary value of this book?

A. Yes, I have.

Q. What is that opinion, Professor Hollis, please?

A. That it's a well-intentioned book that is not completely successful in its literary intentions.

Q. And have you formed an opinion, Professor Hollis, as

to the graphic descriptions of the sex act present herein, as to whether or not they would add or detract from the literary value?

Mr. Robbins: If your Honor please, I object to that question.

The Court: I will record your objection, but read that first question of Mr. Kent's and the answer.

(Question and answer read.)

The Court: The next question, I am going to ask. Why do you think it was not completely intentioned? I will give you some way so you can tell us what made you feel that way.

A. Yes. May I use his text for a minute, his book?

The Court: Very well.

A. May I use it?

Mr. Kent: Let the record show that I hand the Professor People's Exhibit No. 1.

The Court: Very well.

A. In this book, your Honor, the author is adopting now [fol. 307] in his technique the role of a narrator, has the speaker in the book now, the narrator speak in the first person in the present tense.

The Court: We've gone through that.

A. Have you done that before? I didn't know, I was not here.

The Court: We've referred to him there, at least the Professors that preceded you called him Mr. "X" because at no time was he called by name.

A. I will use that. Mr. "X" in the book is speaking and is presented as speaking in the present tense and in the first person. My feeling is that in such an attempt, the appeal to the imagination is a direct one, a dramatic one. Most books do not deal with work in the present tense, they deal in the past tense. They deal in the third person rather than the first person. So that the narrator is not speaking from himself. I am doing this. Rather he says he did this.

Because of the very difficulty of this first person narrator technique or device, it seems to me that the author has not completely conquered or surmounted the problems that that

literary device or literary technique demands. Now, shall I go on from there?

The Court: Please.

A. Now, it seems to me that the use of the passages in the text is in my mind not harmful in the sense of the subject matter. I do not believe that there is any subject matter which is beyond the appeal of the writer. It is rather the handling of the subject matter, so that the reader is in a [fol. 508] position to contemplate it without any disturbance to his normal, healthy social attitude. I feel that in this sense, the use of the first person, present tense, is used in an imaginative spur to the reader and as such it detracts from the significant theme of the work.

The Court: Now, we have various passages there that are in People's Exhibit 2, is it?

Mr. Kent: Yes, your Honor.

The Court: You have not read those or seen those?

A. All I have seen is the book, sir.

The Court: The book.

By Mr. Kent:

Q. Would you look over these, please?

Mr. Kent: Let the record show I hand the Professor People's Exhibit No. 2.

The Court: Read those either hurriedly or just enough to identify them as parts of the book and you have an objection.

Mr. Robbins: Not to identification, but I was readying myself for the subsequent question.

A. I would,—of the lines I have taken out, I would identify these as taken from the book.

By Mr. Kent:

Q. You do identify those excerpts as being part of the book?

A. Yes.

Q. You've read them and recognized them as such?

A. Yes.

[fol. 309] Do you have an opinion as to the literary merit of the excerpts as you note them?

Mr. Robbins: If your Honor please, I object.

The Court: We went through that once.

Mr. Kent: All right.

The Court: Why don't you take your second question first? In other words, would they add or detract to the literary value of the book, in your opinion?

Mr. Robbins: May I again record my objection?

The Court: Your objection is recorded in all of this type of questioning. Of course, it's over-ruled, sir.

By Mr. Kent:

Q. Excuse me. Professor Hollis, do you understand the question? Do those excerpts, those passages add or detract from the literary value or merit of the book?

A. Your question is so worded, sir, that it's difficult to make an answer that really answers my reaction to these passages. It is not the material in the passages, it is the handling, it is the way in which the passages are treated.

The Court: That's what I am talking about, are we talking about the same passages? You mean it's the author's method of handling the passages, rather than the incidents?

A. That is right.

The Court: In other words, his minute descriptive detail of feelings and sensual feelings of the sexual act, and so on?

A. That is right. It is not the material. I think that the sexual act can be——

[fol. 310] The Court: In other words, he could have said the same thing in another way, without making the book offensive at all?

A. Yes, I do, sir.

Mr. Kent: I have no further questions.

The Court: Now, let me ask you one more along that line, just to clarify this.

A. Could I take a passage, sir, and explain what I mean, a very simple passage?

The Court: Well, I think we have that.

A. That's done, all right, sir.

The Court: In other words, the passage referring—let me ask you this. Do you think it was necessary for the author to go into such minute description of details in order to carry out this theme of the inner conflict between the spiritual—what do I want to say——

A. The question of spirit?

The Court: Between the flesh and the spirit, put it that way. Do you think all these details were necessary to portray that?

A. It is important in the theme of this novel, as I see it, that the temptations to the flesh be understood, be understood from the point of view of the author, from the point of view of the reader. The thing is that the description of the temptations of the flesh as presented here is not seen as an item in the conflict presented as a theme of the novel, [fol. 311] rather is a scene—is seen as a separate spirit to the sexual appetite of the reader, rather than as it should have been connected with the theme of the novel.

The Court: Very well, take the witness.

Cross-examination

By Mr. Robbins:

Q. Is it Professor Hollis, is that your name?

A. Yes.

Q. Hollis. Professor Hollis, you started off your testimony by having some differences in your evaluation of writing this book in the first person. You thought that married the book in some way?

A. No, I did not say that, sir. I said that I thought that the technique that the man used is a technique that is not very often used by authors, and when it is used, it demands a remarkable skill.

Q. You found that in your opinion this detracted from the book, using the first person?

A. No, I said that I did not think that the man was successful in his use of it. I think some passages in the book do indicate that, some passages do not.

Q. Judging the work as a whole, Professor Hollis, did you find there was a sincerity of purpose in this work?

A. I would say no, I do not think so.

[fol. 312] Q. You do not?

A. No.

Q. Did you find that there was a very realistic portrayal of the conflict that the protagonist experienced throughout this book?

A. Will you say the question again, sir.

Q. Did you find there was a realistic portrayal of the conflict that the author was describing in this book?

A. The conflict was not made sufficiently apparent to me, whether it was the conflict in, say, the spiritual against the flesh, was not to me, say, a convincing conflict. The Alpha and Omega, the A and Z business. It is not that in my feeling. The sex act in itself in normal circumstances is a healthy thing. It is made a morbid thing. The man's attraction to the sexual acts in the isolated passages of the book.

Q. Would you say that might be in a facet of human life?

A. Yes, but I do not think he's universalized it to me in a sense that he's made it convincing to me as a normal person, representative person's reaction to the problems of life, problems of conquering one's appetites, and so on.

Q. Basically, it's the story of a young American musicologist, who starts to stay at a French Benedictine monastery?

A. Yes.

Q. Would you say when he first comes to the monastery, he has a dislike to the stark monastic regime?

A. No.

Q. You would not say that?

A. I think he is attracted by it. The thing is, he is curious [fol. 313] about it, but he is curious about it in a way which I find hard as being representative. Seems to me that there are other things that would arouse his curiosity and he wouldn't, the first time he sees the bed that he is to sleep in, think of the bed he was in last night with his mistress. Why this opposition?

Q. At this time, this gentleman has nowheres near attained a religious fervor of any sort.

A. But I believed that he is presented as a normal person.

Q. I am not asking that. Would you say when he is first

in the monastery, that he is nowhere near obtained any religious type of fervor?

A. Oh, yes.

Q. Would you also say that he rebels at the forced monastic life, that that annoyed him?

A. No, he accepts that. He does not live up to it, but he accepts it and he respects the monks for their rule and for their purposes, and so on. I think that's apparent all through the book.

Q. Now, incidentally, did you—you know a British Father, Gerald Van?

A. Yes, I do. You mean personally or by reputation?

Q. Reputation?

A. By reputation, I do.

Q. Does he have a reputation as an outstanding thinker in your particular faith?

A. Yes, he does, sir.

Q. Does he have a reputation as an outstanding reviewer [fol. 314] of books?

A. I could only say the books I have read, I would say the things I have read, I think I agree with him more frequently than I disagree, yes.

Q. Well now, are you familiar with the book review by Father Gerald Van of this review, "The Devil Rides Outside?"

A. No.

Q. You agree with Father Van when he said——

Mr. Kent: Just a minute, the witness says he is not familiar——

The Court: Objection sustained. If you have him here, I am not going to permit anything from any review made anywhere, unless the person is here to testify and be cross-examined.

Mr. Kent: May I use it to prove this witness's competence——

The Court: The only thing that could serve is to put in the testimony of some one else who cannot be cross-examined. The Professor says he is in—he agrees with him sometimes and sometimes he does not. Now, if you want him here, you could bring him here.

We will adjourn the case until then.

Mr. Robbins: Since the witness is in England, I don't think I could quite take that adjournment.

The Court: I don't know. Don't forget your English version was different than this.

Mr. Robbins: Your Honor please, there are no differ- [fol. 315] ences between the two American versions, which is the only thing I have contended for.

The Court: No, I say maybe this British Father read the English version. Remember there are several corrections, you haven't forgotten that?

Mr. Kent: 380, if I recall.

By Mr. Robbins:

Q. Would you say at all, Professor, that this work had literary merit when viewed as a whole?

A. I think I already answered that.

Q. I don't know whether you did or not, frankly.

The Court: Well, Professor, it may seem strange to you that some things are asked twice. He has a right to cross-examine.

A. I understand, sir.

The Court: Even though he feels that you have answered.

A. Yes, I believe I said, and I would want to repeat and perhaps make it clearer, that I believe the work is not successful in its literary intentions, Whatever the intentions of the author may have been. I would quite agree that the author may have intended to write a very noble work. If he could not surmount the difficulties of the material, that's unfortunate. I mean, he may have had the intentions. I have no way of gauging or reading the man's mind. I think the book in no way itself,—does not manifest a complete success in suggesting, connoting——

By Mr. Robbins:

Q. I beg your pardon. There would be many people that would think this book was not a greatly successful work. I [fol. 316] am not examining you on that point. Apart from being a greatly successful work, would you say it was a serious work or one which was written for frivolity or written for dirt for dirt's sake?

A. I believe the book was contrived to set up this opposi-

tion, so the person reading it will be reading, ready to say this is a book I accept because the man ultimately reforms, and half the scenes take place in the monastery. So that tends to put an air of authority or of acceptance, or something, over the passages which it seems to me are difficult to read in the spirit, which I would hope that the author intended them. May I use an example? It's a very common device to take any work, a novel, of Moll Flanders, we always use it as an example, a girl who is a prostitute and in the end she reforms—all the way she writes about her misadventures, and then she says "Now, my readers, don't do these" vicarious experiences. I don't feel that should be the aim;

Q. You feel that Moll Flanders, which you referred to, was not a successful——

A. Was not a successful work, was not a serious work. No, I think it was written for the market.

Q. You would criticize DeFoe, Daniel DeFoe, for his contrivance?

A. As he, himself, admitted in his later years.

Q. Therefore, because of the contrivance, you would say that the work had sufficient insincerity that its passages might make it obscene, is that right?

[fol. 317] Mr. Kent: Well, may it please the Court——

Mr. Robbins: If your Honor please, he brought in Moll Flanders, I didn't.

A. Yes, it's a legitimate example. But the question of obscenity, will you define what you mean by obscenity?

By Mr. Robbins:

Q. I withdraw the word. Do you feel that DeFoe in writing Moll Flanders was sufficiently insincere in his purposes to give the reader the impression that the sex passages were inserted for dirt, for dirt's sake?

A. To permit the reader to enjoy vicarious things, perhaps he would not enjoy in life.

Q. You would say that was the dominant purpose of DeFoe in writing Moll Flanders?

A. Apparent purpose, I wouldn't——

Q. Shall I qualify it and say "apparently dominant?"

A. He was not writing a novel.

Q. I will accept your apparent purpose, I don't want to quibble with you.

A. All we know is what the book reads.

Q. In many ways, you say this is similar to DeFoe's Moll Flanders, in its use and contrivances of these passages?

A. Yes.

Mr. Robbins: I have no other questions.

[fol. 318]

Re-Direct Examination

By Mr. Kent:

Q. Professor Hollis, do you think your students would be able to follow the conflict as presented between the spirit and the flesh in this book?

Mr. Robbins: I object. It's his opinion. What the attitude of other readers might be, giving his opinion of what his students might or might not follow. I think that's remote.

Mr. Kent: This man is a Professor in one of our colleges here. He works with the students, he's worked with them for almost twenty years and I think it's apparent to the Court how well versed the Professor is in English literature and his great understanding of it.

Mr. Robbins: I don't want to go into——

The Court: Is that all?

Mr. Kent: Yes, that is all.

Mr. Robbins: If your Honor please, he's still being asked as to what his students might think generally about the book, and I will be perfectly glad to have the Professor's opinion as to what he thinks about the book; as to what his students think, a wide range of people, on a wide subject, I think is remote. We would like to have the right to cross-examine the students just the same as the Prosecutor would insist on cross-examining Father Van.

Mr. Kent: I will change the question, if I may be permitted to do so.

[fol. 319] The Court: I've listened, now go ahead.

By Mr. Kent:

Q. Do you have certain standards that you use in your recommendation of books to your students?

A. It is an odd question, sir. Do you mean in class, you mean books I give them as assignments to read in class, or books I stress for their general education, where——

Q. Either in class or for outside reading purposes?

A. Yes, but the standards vary with the situation. If I am recommending a book to a class for specific examination of how this plot is worked out, or this is a historical romance, how is history used, we go at it in a different way. I take one example of a novel in the study of a novel, for instance. Go ahead.

Q. Excuse me, I am sorry.

A. There would be a different reason for my different standard engaging the work for, say, a literary group that I might be speaking to of an evening, or to my family, or to my friends, or to other people.

Q. Now, would you recommend "The Devil Rides Outside" to your students for any literary purpose?

A. To my students,—this is my students in college?

Q. Yes.

A. To my, perhaps, graduate students, yes. I would do so, always, though, as I do, perhaps, with any other book, I feel we must study for the values that we can get out of it, that can be related to other literature and other aspects of literature. I would take it and explain beforehand that this is [fol. 320] a book about which there has been some concern about its value, that I am not concerned with the so-called descriptions in it, descriptions, and so on, if persons do not wish to read it, they do not have to. I would not demand of students that they had to read this book.

The Court: You said that would apply to graduate students?

A. Under-graduate students, if I did not know the student very well, I would be very cautious about recommending a book of this sort.

By Mr. Kent:

Q. Why would you be very cautious?

A. Because I do not think it is successful. I think the

passages in the book would arouse sexual appetite on the part of students, and there is no way in which that sexual appetite can be satisfied normally.

Mr. Kent: Thank you, Professor, I have no further questions.

[fol. 321] Re-Cross Examination

By Mr. Robbins:

Q. Professor Hollis, you said you would have no—withdraw that. You said with respect to graduate students, you might recommend this book with an introduction about it, you are giving them a statement at the time you recommend it, that they might or might not read it and there has been some controversy about it?

A. Yes sir.

Q. Now, it might be, however, that you might suggest that they would read it, is that right?

A. It would depend on the situation, sir. I would think there are ways in which I would. For instance, if I were looking for a good example and a poor example, and an unsuccessful, say, the use of the first person device, I would pick this out, and I might take a passage, and so on.

Q. If they were to read it, they would have to buy it?

A. If the book was not obtainable, I would not ask them to get a smuggled version.

Q. I mean quite apart from whether it was to your knowledge obtainable or not obtainable in the particular community, in discussing this book with your graduate students as an example of one thing or another, you would have no objection if they had a book like this, or this particular book in their home?

A. No. The question you asked me——

Q. I am asking you this question now.

A. No, you were not. You asked me the question if I [fol. 322] would use this book in a class and I said I would and indicated why. I would quote a passage inasmuch as I have a copy. Your question was not asking me how I would use the book in a class, whether I would recommend this book in the sense of an example in class.

Q. I thought perhaps in answer to the Prosecutor's ques-

tion, that you said that you would recommend this not with your unqualified endorsement, I am not suggesting that, but you would recommend this as a type of reading for post-graduate students, is that right?

The Court: He didn't say that. He said the problem may arise where he wanted to demonstrate something to the student and he would read it for that purpose.

A. That is right.

Mr. Robbins: I am accepting that, I am not trying to get a different connotation out of it. Maybe the word "recommend" is too strong, but at least you were—you would advert to your book to your graduate students as an example of something or other you wanted to demonstrate in the class?

A. To talk about in the class?

Q. Believe me, I am not trying to put words in your mouth. In the course of that, they would have to read the book, to find out the lesson you were trying to import, they would have to read the work?

A. No sir. I could read them a passage out of it, they could, for instance, take my book, sir. Take Ulysses. You [fol. 323] could explain what I wanted to about extreme of consciousness by reading them a passage from Ulysses without saying to everybody "I want you to go and buy this book."

Q. Before we get to Ulysses, I don't understand it.

The Court: We are not going to determine Ulysses. I've seen that so much.

Mr. Robbins: Your Honor, I haven't brought in——

The Court: I've seen so much in the briefs, I think I've read the book.

Mr. Robbins: I've brought in neither DeFoe nor Ulysses.

A. You are trying to make me say I would demand the students buy the book.

The Court: Wait.

Mr. Robbins: I know you would never demand the students buy the book. That is the last thing I am suggesting you said. I am quite convinced you would in no circumstances demand the students buy the book.

By Mr. Robbins:

Q. But let's say you thought the book had some significance to point out some literary style. Whether you, a Professor, disapproved, but you would advert your students' attention to it?

A. Right.

Q. In diverting your students' attention to it, put it this way, is it important at least, some concept that the book is serious to present the problem that you are trying to give to your students?

[fol. 324] A. All right, sir, I will agree with that.

Q. In other words, this is not a comic book. You wouldn't ask your students to read a comic book to find out about the first person situation. At least, as literature, whether it came off well, or didn't come off well?

A. Yes sir.

Mr. Robbins: That is all.

The Court: I was thinking along the same lines. Go ahead.

By Mr. Robbins:

Q. Would you—did you know, for instance, that this book, a different edition, but one which, according to the testimony, is changed only in minuscule matters?

Mr. Kent: That's argumentative.

Mr. Robbins: I will withdraw the characterization.

By Mr. Robbins:

Q. Did you know that "The Devil Rides Outside" in an edition published by Smiths of Fort Worth, in 1952, was in the Detroit Public Library?

A. No. I take it back. I mean, I read it in the newspaper account of the hearing.

The Court: In other words, that's what they call the closed shelf restricted?

A. Yes. I read that in the papers, sir.

The Court: You can't see the book by going there?

Mr. Robbins: If your Honor please, an adult may.

Mr. Kent: Only if they ask for it specifically.

[fol. 325] The Court: They must know that it is there or published, and ask for it.

Mr. Robbins: That is right.

The Court: You see, as we were all saying just in a light vein, everybody that got a copy of this book here, the Statute prohibits the giving away of it, but there is a serious purpose in allowing these people here to have a copy of that book and to read, either as possible witnesses or as possible advisory capacity. So, I have permitted the Police Department, even to violate the law and go ahead and let some people have this book.

Mr. Robbins: To that extent, we have not completely fobbed-off the adult world of the City of Detroit, and I am thankful to your Honor for that. I have no further questions.

Re-Direct Examination

By Mr. Kent:

Q. Professor, did I understand you to say that the reason you might, if you ever did call attention to your graduate students this work, is because of the fact that it has aroused interest here in the community, is that it, or was it based——

A. Did I say that?

The Court: He didn't say that.

A. I didn't know that I did say that.

By Mr. Kent:

Q. Your basis of that was something literary in there might be used as an example?

A. Yes.

[fol. 326] The Court: Something in the teaching of literature and in the differentiating of different subjects and the handling of different subjects?

A. That is right.

Mr. Kent: Thank you, Professor Hollis!

Mr. Hollis: Thank you.

(Witness excused.)

Mr. Kent: The People rest, your Honor.

Mr. Robbins: Now, if your Honor please, the People have no—the Defense has no further evidence to submit, I should like——

The Court: The old Prosecutor comes back into you.

Renewal Of Motions And Denial Therefore

Mr. Robbins: Yes, your Honor. I have been trying to subjugate it for many years, but it wells up. I should like at this time to renew all the motions made at the beginning of the case, with respect to the unconstitutionality of the Statute, and I would also like to move that all the testimony dealing with excerpts of the particular book be stricken from the record. I should like further to move that the case against the defendant, Mr. Butler, and I shall direct myself to Mr. Butler in a moment, be dismissed by your Honor on the grounds that the People have not established, beyond a reasonable doubt, the guilt of the defendant, which is predicated, the question of guilt being predicated as to whether or not the book is in fact obscene or, under the words of the Statute, if such Statute be constitutional, whether it contains obscenity as defined in the Statute.

[fol. 327] And I would like also to renew at the same time, for the record, all my motions made during the course of the trial, to the same effect and force as if I specifically enumerated them. I think they are pretty well stated on the record and I should hesitate that I feel that I could out-do them in a better way than I did in my preliminary statement.

With respect to the Defendant Butler here, I should not like to think he's been the forgotten man of the battle of this book. I do hope, your Honor, that whatever your view, ultimate view of this case will be, the book is one which opinions, at least on the witness stand, have differed. I think it's a fair statement, if anything else to say, that there have been differences of opinion as to the literary value of this work and differences of opinion as to whether or not it violated or did violate the canons of good writing, and whether or not the undue emphasis on the sexual episodes, as stated by the People's witnesses, was carried too far. I think I should, a fair statement of all the evidence would indicate, I hope, to your Honor, that in view of this conflict,

and in view of a very serious opinion, at least in favor of the book's character is an unviolated—is unviolative of the Statute, that reasonable doubt may be garnered from that.

The defendant, of course, is entitled to all the presumptions of innocence and one of the rights is that the proof against him must be accorded the Court, beyond a reasonable doubt.

[fol. 328] Mr. Kent: May it please the Court, I don't like to interrupt Counsel, I wonder if he is arguing the case now.

The Court: No. Very well, he is not arguing the case.

Mr. Robbins: I don't intend to sum up the evidence. I want to be sure that the rights of the defendant are fully protected and in my humble view of the case myself, of course, it is not one wit controlling in this Court and I defer to his Honor's opinion when he renders, when rendered, is that the proof against this defendant in this particular case has not been beyond a reasonable doubt.

The Court: See, this being a misd--eanor, before I go into that, let me first deny your motions, those you made during the trial, remade, restated now, and the motions which you made. The Court is not unmindful of the fact that this defendant was probably urged by the publisher to come here and sell that book. I don't think that he came here with a truck load of books, trying to flood the City, because it seems to me that Inspector Case was very handy there to make the arrest.

So, I don't think I intend to treat him as a man who came here just to flood the City with books, nor do I intend to get even with the publisher by taking it out on the defendant, should I find him guilty. The real test here is to determine whether or not his sale to Inspector Case was in violation of law.

[fol. 329] Now, do either one of you care to argue the matter?

Mr. Kent: The People and the Defendant, and I believe I can speak for both of us, have discussed the situation as it pertains to summation and oral arguments to the Court. We both feel that our varying positions have been stated both on the record and in the briefs which we both have submitted to your Honor. My brief covered the testimony up until the past Friday. If the Court wishes, I can write an amendment to the brief.

The Court: No. The Court is going to make his findings right now. I don't like these things to hang, unless, of course, you want to bring this witness back from England.

Mr. Robbins: No.

Mr. Kent: Not unless we all go together.

Mr. Robbins: Let me say, before the Court makes its findings, let me say, I am a stranger in this Court and I want to express on the record the extreme courtesy and my delight at the fairness and the pleasure and very cordial atmosphere that has been accorded to a lawyer from another State. I feel at the conclusion of this case, that I were at home. I want to say that to your Honor and the Prosecutor and the police.

The Court: Before you know it, maybe the Courts in New York will have the opportunity to try to afford a Detroiter that treatment.

[fol. 330] Mr. Kent: I think we ought to both state on the record that we waive any oral argument.

ORAL OPINION

The Court: I think both have stated that you waived oral arguments.

There may be or may not be a longer written opinion filed later in this case.

In this case, the Detroit Police Department, through its officer, Inspector Herbert Case, arrested the defendant, Alfred E. Butler for selling a book, namely, "The Devil Rides Outside," written by John H. Griffin, claimed to be in violation of Section 740.343 of the Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953, claiming it to be a book containing obscene, immoral, lewd, lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth. The defendant claims the action should be dismissed because the provisions of the Act under which this case is brought is repugnant to the First and Fourteenth Amendments of the Constitution of the United States, and to the Constitutional provision of the Constitution of the State of Michigan, guaranteeing the right of Free Press.

Now, without reading the various Sections, various

Amendments and Sections of the Constitution, I will say that in this connection, the defendant claims that the Statute is vague and indefinite and void because it merits [fol. 331] the finding that the book contains obscene, immoral, lewd or lascivious language, without taking into consideration the literary value of the entire book, contending that it was necessary for the author to include in his book the language and descriptions objected to in order to make the book a complete work of art, and that said language was necessary to show the conflict in the feelings, thought and action of the central figure of the book who remains unnamed, and who is torn between the desires for sexual and sensual pleasures, and the longing for a spiritual life and control over his desires. The defense contends that the language objected to is necessary, because only by the detailed description of his sexual and sensual desires and pleasures could the author show the contrast and the intense conflict raging in the man's soul, and that to change the language or descriptions would ruin or completely impair or greatly impair, rather, the work as a book, the book as a work of art.

The sincere purpose of the author being to vividly portray this intense conflict and the final victory of good over evil.

Now, after reading the book, and after having examined the authorities cited in the briefs of counsel, and after listening to the testimony offered in this case, the Court finds that the Act under which this case is brought is not unconstitutional, as being in violation and repugnant to the First and Fourteenth Amendments of the United States Constitution or against the Section of the Michigan Constitution [fol. 332] guaranteeing the right of the Freedom of the Press.

And the Court further finds that the State of Michigan under its police power may secure the health and welfare of its citizens and its youth, and that it had a right to pass the Act in question.

The Court further finds that the language contained in the book is obscene and immoral and lewd and lascivious, and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth.

There is little question as to the sincerity of purpose of the author in writing the book, but such sincerity does not afford him the privilege or license of violating the law and seek to justify it under the guise of being absolutely necessary in order to maintain the literary value of the book.

There is little question in the mind of the Court that the author, with his beautiful command of the English language, could have portrayed to the reader the conflict within this individual, without setting forth in detail the intimate acts and lustful feelings in obscene, immoral, lewd and lascivious language, contrary to our Statute.

Now, in that connection, I've listened to the experts called by both sides and I am not convinced that that part of the book dealing with the sexual acts and pleasures of the author was necessary, even treating the book as a whole. However, the Court does have to find that it is in violation of this particular Statute because the Statute does say that [fol. 333] it is sufficient to contain lewd, immoral, obscene and lascivious language or description.

So that if, therefore, if there ever is a review of my decision in this matter, I am not trying in any way to evade the issue; I am trying to follow the Statute as it is. So, I am holding that the defendant is guilty because he sold a book in the City of Detroit containing this language, and also because the Court feels that even viewing the book as a whole, it was not necessary to the proper development of the theme of the book nor of the conflict expressed therein.

Therefore, the Court finds the defendant guilty of the charge and orders him to pay a fine in the amount of $100.

Mr. Kent: Thank you, your Honor.

[fol. 334] Reporter's Certificate is foregoing transcript omitted in printing.

[fol. 335] IN THE RECORDER'S COURT OF
THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN

vs.

ALFRED E. BUTLER

#15053

Offense: Sale of obscene Literature.
Before the Hon. John P. Scallen.

SENTENCE—July 16, 1954

Correct Sentence to read $100.00 Fine, Ret, $100.00 Fine Paid w/o authority from Deft. or his counsel. Records corrected to show sentence imposed by Judge Ricca instead of Judge Groat. Deft. released on $500 Personal Bond pending motion for new trial on appeal. Judge Ricca.

[fol. 336] [File endorsement omitted]

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

[Title omitted]

NOTICE OF HEARING ON MOTION FOR A NEW TRIAL—Filed July 20, 1954

To: Gerald K. O'Brien, Prosecuting Attorney for Wayne County, and George Kent, Assistant Prosecuting Attorney, 1300 Beaubien Street, Detroit # 26, Michigan.

Please Take Notice, that attached hereto is a true copy of a Motion for New Trial filed in the above entitled cause with the Honorable O. Z. Ide, Presiding Judge of the Recorder's Court of the City of Detroit. Notice of hearing of the same will be set by the Presiding Judge in accordance with the rules and practice of the Recorder's Court of the City of Detroit.

MANUEL LEE ROBBINS (Signed) Manuel Lee Robbins, 30 Broad Street, New York 4, New York.

WILLIAM G. COMB (Signed) William G. Comb, 1512 Dime Building, Detroit 26, Michigan, Woodward 2-6256, Attorneys for Defendant.

Dated: July 20, 1954.

[fol. 337] IN THE RECORDER'S COURT OF
THE CITY OF DETROIT

[Title omitted]

MOTION FOR NEW TRIAL

To the Honorable O. Z. Ide, Presiding Judge of the Recorder's Court of The City of Detroit:

Now comes the above named defendant, by his attorneys, Manuel Lee Robbins and William G. Comb, and moves the Court to grant unto said defendant a new trial for the following reasons:

(a) That Section 750.343 of the Compiled Laws of 1948, as amended by Act 74, Public Acts of 1953, under which the warrant in the above entitled cause was issued, is unconstitutional in that it is vague and indefinite, and denies to this defendant the rights and privileges guaranteed under the First and Fourteenth Amendments to the Constitution of the United States of America.

(b) That Section 750.343 of the Compiled Laws of 1948, as amended by Act 74, Public Acts of 1953, under which the warrant in the above entitled cause was issued, is unconstitutional because it denies to this defendant the freedom of press, speech and expression, as guaranteed by the Constitution of the State of Michigan.

(c) That there was not sufficient, competent evidence from which the Court could find the defendant guilty beyond a reasonable doubt.

(d) Because the defendant is not guilty of the charge set forth in the warrant of arrest.

[fol. 338] This motion is based upon the records and files in this cause, together with the testimony presented, exhibits admitted and briefs filed before the Honorable John A. Ricca, trial judge.

There is also presented herewith the Certificate of the Trial Stenographer.

Respectfully submitted,

MANUEL LEE ROBBINS (Signed) Manuel Lee Robbins, 30 Broad Street, New York 4, New York.

WILLIAM G. COMB (Signed) William G. Comb, 1512 Dime Building, Detroit 26, Michigan, Woodward 2-6256, Attorneys for Defendant.

[fol. 339] STATE OF MICHIGAN
County of Wayne

William G. Comb being duly sworn deposes and says: That he is one of the attorneys for the defendant Alfred E. Butler, who was convicted, on the 13th, day of July 1954, by the Honorable John A. Ricca for having violated Section 750.343 of the C. L. of 1948, as amended by Act 74, P. A. of 1953, (sale of obscene book).

That the said defendant was on the 13th, day of July 1954, sentenced to pay a fine of $100.00.

That this Motion is not filed for the purpose of delay, in that your deponent is of the opinion that the defendant has a good and meritorious defense to the charge and the statute under which the warrant was issued.

That the defendant has been released on personal bond pending the hearing on this Motion.

WILLIAM G. COMB (Signed)

Subscribed and sworn to before me this 20th, day of July A. D. 1954.

CARL F. LANG (Signed)

Notary Public, Wayne County, Michigan. My Commission Expires 9/7/57.

[fol. 340] STENOGRAPHER'S CERTIFICATE

[Omitted in Printing]

[fol. 341]

IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

VS.

ALFRED E. BUTLER, Defendant,
Misd. No. #15053

OPINION OF THE COURT DENYING MOTION FOR A NEW TRIAL—
Feb. 24, 1955

Present: Hon. W. McKay Skillman, Judge of Recorder's Court.

The Court has carefully read the voluminous transcript of the testimony taken before Judge Ricca, and has read the book, "The Devil Rides Outside" and sees no reason to disagree with the findings of the trial court.

Accordingly, the verdict and judgment is affirmed.

W. McKay Skillman, W. McKay Skillman, Judge of the Recorder's Court.

[fol. 342] STATE OF MICHIGAN

IN THE RECORDER'S COURT OF THE CITY OF DETROIT
ALFRED E. BUTLER, Appellant,

-VS-

STATE OF MICHIGAN, Appellee.

Misc. No. 15053

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES—Filed Sept. 2, 1955

1. Notice is hereby given that Alfred E. Butler, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Recorder's Court of the City of Detroit, to wit: a judgment of conviction of the appellant, entered herein on July 13th, 1954.

This appeal is taken pursuant to 28 U.S.C., Sec. 1257 (2).

Appellant was convicted of the crime of selling or offer-

ing for sale a book *containing* obscene, immoral, lewd and lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, in violation of the Michigan statute, Section 750.343, Act 74 of Public Acts of 1948, as amended in 1953, (M.S.A. 28.575); and was sentenced to pay a fine of $100; and is presently enlarged on bail in the sum of $500 personal.

An Application for Leave to Appeal to the Supreme [fol. 343] Court of the State of Michigan was filed and an order was entered denying said application on June 14, 1955.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Warrant. 2. Plea. 3. Motion to Dismiss. 4. Transcript of the Proceedings of trial before the Honorable John A. Ricca, July 7, 1954 to July 13, 1954, inclusive. 5. People's Exhibit I. 6. Judgment of Court and Sentence. 7. Motion for New Trial. 8. Order Denying Motion for New Trial. 9. Application for Leave to Appeal. 10. People's Memorandum Consenting to Granting of Leave to Appeal. 11. Order of Supreme Court Denying Application for Leave to Appeal. 12. Notice of Appeal. 13. Proof of Service of Notice of Appeal.

III. The following question is presented by this appeal:

Does the Michigan statute, section 750.343, Act 74 of Public Acts of 1948, as amended in 1953, (M.S.A. 28.575), on its face and as applied, which provides as follows:

[fol. 344] "Any person who shall import, print, publish sell, possess with intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly

tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive, or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

violate the appellant's rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States in that;

(a) its provisions blanketly prohibit and punish the publication and distribution of any book to any member of the public because of the effect such book might tend to have merely on minors, thereby excessively and unconstitutionally limiting and restricting the appellant's constitutional rights of freedom of press, there being neither charge nor proof that the book in question was sold to or possessed by a minor;

(b) it is so vague and indefinite as not to comport with due process because its provisions prohibit and punish the publication and distribution of a book if such book contains matter which tends to incite minors to wrongful conduct and corrupt their morals—a wholly vague criminal proscription, predicated upon unascertainable and indefinite standards of conduct;

[fol. 345] (c) its provisions prohibit and punish the publication and distribution of a book merely *containing* certain proscribed language and descriptions, thus precluding any consideration of the entire book as a whole and thereby imposing and enforcing unconstitutionally restrictive limitations on the appellant's freedom of press.

Manuel Lee Robbins Manuel Lee Robbins, 30 Broad Street, New York 4, N. Y.

William G. Comb William G. Comb, 1512 Dime Building, Detroit 26, Michigan, Attorneys for Alfred E. Butler, Appellant.

Daniel J. O'Hara Assistant Attorney General of the State of Michigan, Hereby acknowledges receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, this 1st. day of September 1955.

Daniel J. O'Hara

[fol. 346]

IN THE RECORDER'S COURT OF THE CITY OF DETROIT

[Title omitted]

STIPULATION FOR AND ORDER EXTENDING TIME TO DOCKET CASE AND FILE RECORD—October 11, 1955.

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties to the above entitled cause, that an order may be entered extending the time to docket the case and file the record thereof with the Clerk of the United States Supreme Court, from November 1st, 1955 to November 30th, 1955.

Manuel Lee Robbins, Manuel Lee Robbins, William G. Comb (Attorneys for Appellant)
Edmund C. Shepherd, Attorney for Appellee.

Dated: October 11, 1955

For good cause shown, It Is So Ordered.

John A. Ricca, John A. Ricca, Judge of The Recorder's Court in and for the City of Detroit.

[File endorsement omitted]

[fols. 347-348] [Judge's and Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 349] IN THE SUPREME COURT OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff & Appellee

-VS-

ALFRED E. BUTLER, Defendants & Appellant.

No. ..... Mis. File # 15053

APPLICATION FOR LEAVE TO APPEAL—March 15, 1955

Application of Alfred E. Butler, defendant and appellant, for leave to appeal from a judgment of the Recorder's Court of the City of Detroit, County of Wayne and State of Michigan, in the case of The People of the State of Michigan, plaintiff, -vs- Alfred E. Butler, defendant, Misdemeanor File No. 15053.

William G. Comb, attorney for the above named defendant and appellant, respectfully shows unto this Honorable Court:

1. That on the 13th day of July, 1954 a judgment of guilty was rendered in the Recorder's Court for the City of Detroit, County of Wayne and State of Michigan, by the Honorable John A. Ricca, one of the judges of the Recorder's Court in and for the City of Detroit.

2. That thereafter a Motion for New Trial was filed and on the 24th day of February, A.D. 1955 the Honorable W. McKay Skillman, one of the judges of the Recorder's Court in and for the City of Detroit, affirmed the verdict and judgment heretofore entered by the Honorable John A. Ricca.

3. That the reasons and grounds of the desired appeal are as follows:

[fol. 350] (a) That the judgment of the trial court violates the defendant's rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.

(b) That the judgment of the trial Court violates the defendant's rights as guaranteed by Article II, Section IV, of the Constitution of the State of Michigan.

(c) That Section 740.343, Act 74, Public Acts of Michigan for 1948, as amended in 1953, (M.S.A. 28.575) is unconsti-

tutional in that as a criminal statute it is vague, indefinite and uncertain.

(d) That the book, "The Devil Rides Outside" is not obscene, immoral, lewd or lascivious within the meaning of Section 740.343, Act 74, Public Acts of Michigan for 1948, as amended in 1953, (M.S.A. 28.575).

(e) That the Court erred in refusing to direct a verdict of not guilty at the close of the People's case, and at the close of all of the evidence.

(f) That the verdict was contrary to the great weight of the evidence.

(g) That the testimony taken as a whole is as consistent with innocence as with guilt.

(h) That the Court erred in denying defendant's Motion for a New Trial.

4. That a statement of the proceedings and facts in said cause so far as they are material, is hereto annexed.

5. The applicant seeks leave to appeal by general appeal.

/s/ William G. Comb William G. Comb 1512 Dime Building Detroit 26, Michigan Woodward 2-6256
/s/ Manuel Lee Robbins Manuel Lee Robbins 30 Broad St., N.Y., N.Y. Attorneys for Defendant and Appellant.

Dated: March 15, 1955

[fol. 351] IN THE SUPREME COURT OF MICHIGAN

[Title omitted]

NOTICE OF SETTLEMENT OF STATEMENT OF PROCCEDINGS & FACTS—March 15, 1955

To: Gerald K. O'Brien, Prosecuting Attorney, for Wayne County, 5th Fl., Police Hdqtrs. Bldg. Detroit 26, Michigan

Take Notice that the defendant and appellant in the above entitled cause intends to apply to the Supreme Court for leave to appeal from the judgment heretofore rendered therein, and that on the 25th day of March, A.D. 1955, a proposed statement of proceedings and facts in support of

such application for leave to appeal will be presented to the Honorable John A. Ricca, Judge of the Recorder's Court of the City of Detroit, in his chambers in the Recorder's Court Building in the City of Detroit, County of Wayne, State of Michigan, for the settlement thereof.

You are herewith served with a copy of the application for leave to appeal and the proposed statement of facts.

/s/ William G. Comb, 1512 Dime Building Detroit 26, Michigan Woodward 2-6256

/s/ Manuel Lee Robbins, Manuel Lee Robbins, 30 Broad Street New York 4, New York Attorneys for Defendant & Appellant.

Dated: March 15th, 1955

[fol. 352] IN THE SUPREME COURT OF MICHIGAN

[Title omitted]

STATEMENT OF PROCEEDINGS AND FACTS

On June 16th, 1954 the defendant, Alfred E. Butler, sold, in the City of Detroit, Michigan, to Inspector Herbert W. Case, in charge of the License and Censor Bureau of the Detroit Police Department, a book entitled, "The Devil Rides Outside" written by John H. Griffin, (People's Exhibit #1).

Thereafter, the defendant Butler was charged in a complaint signed by the Honorable Gerald W. Groat, Judge of the Recorder's Court of the City of Detroit, with having unlawfully sold, possessed with the intent to sell, or offered for sale a certain book, pocket sized edition, of "The Devil Rides Outside", containing obscene, immoral, lewd and lascivious language or descriptions tending to incite minors to violent or depraved or immoral acts, manifestly tending to the morals of youth in violation of Section 740.343, Act 74 of the Public Acts of 1948, as amended in 1953 (M.S.A. 28.575).

At the beginning of the trial before the Honorable John A. Ricca, the defendant, through his counsel, moved to dismiss the warrant and proceedings upon the ground that the

statute under which prosecution was entertained is unconstitutional, and that the proceedings violate the defendant's [fol. 353] rights as guaranteed by the Constitution of the State of Michigan and of the United States of America.

Said motion was subsequently denied.

Inspector Herbert W. Case testified that he purchased People's Exhibit #1, a book entitled, "The Devil Rides Outside" by John H. Griffin, from Alfred E. Butler, the defendant, on June 16th, 1954, in the City of Detroit.

Exhibit #1 was offered and received into evidence without objection.

Exhibit #2 is a list of 101 excerpts taken from the book by the witness, Inspector Case, and used as the basis for the arrest of the defendant Butler. Objection was made to the introduction of Exhibit #2 by counsel for the defendant upon the ground that the book must be viewed as a whole.

Inspector Case, upon cross-examination, admitted that he learned that the public library contained the book, "The Devil Rides Outside" and that it is placed in its "closed shelf".

After the People rested, the motion made at the beginning of the trial to dismiss, was renewed and in addition thereto upon the grounds:

(a) That the People had not proven a case against the defendant beyond a reasonable doubt.

(b) The act upon which the defendant was prosecuted is unconstitutional.

The Court took the motions under advisement.

The defendant submitted, through Harriett Good, Chief of the Book Selection Department, Detroit Public Library, testimony to the effect that the book, "The Devil Rides Outside", by Griffin, was selected by the committee upon purchases of books to be placed in the Detroit Public Library. That the first edition was received in the library on January [fol. 354] 12th, 1953 and listed in the Home Reading Department, for restricted use, available to adults who asked for them. Miss Good further testified, "It is the judgment of the persons involved that the book has literary value. It should be restricted in the public library. However, it should not be promoted." On cross-examination she stated

that the public library has a book selection committee which passes upon books which are submitted to them, and they determine whether books should be accepted both from a literary and moral standpoint. They refused to promote the book because there are certain scenes and incidents which were for adult readers only and on that basis we restricted its use for young people. By placing the book on the restricted list, that meant it was not the type that was good for a child or minor person.

Defendant's Exhibit #1 is copy three of the fiction title, "The Devil Rides Outside" by John H. Griffin, in the Home Reading Department and belonging to the Detroit Public Library.

Freeman Lewis, Executive Vice President of Pocket Books, Inc., testified that he pocket edition, Peoples Exhibit #1, and the hard cover edition, Defendant's Exhibit #1, of the book, "The Devil Rides Outside" is the same except with respect to editorial changes. He stated on cross-examination tha the book was sold primarily through a group of independent wholesalers of whom there are 800 in the United States and Canada. Approximately 50 per cent are placed for sale in drug stores; the rest are placed in five and ten cent stores, book stores, department stores, cigar stores and news stands. Some of these stores are located near schools, where school supplies are sold.

Sculley Bradley testified on behalf of the defendant that he was a Professor of English at the University of Pennsylvania and Chairman of the Department of American Civilization. That he has received M.A. and Ph.D. degrees. That he has read People's Exhibit #1, "The Devil Rides [fol. 355] Outside", and testified regarding the book,

> "I think this is a serious work of literature. That a highly ethical intent, and that it has succeeded in its intention to convey moral earnestness in respect to a religious experience which occurred to the original character, I think of him as Mr. "X" because he is not named in the book."

The witness then proceeded very explicitly to relate how he arrived at his conclusion as set forth above, and concluded that the book as a whole has substantial literary

merit and the author a sincerity of purpose. Professor Bradley, on cross-examination, stated that, "passages in the book might suggest to the minds of the young, of either sex, thoughts of an immoral and libidinous character * * *" but that "in general" they would not "stir the sex impulses and excite the sensual desires".

Frank L. Huntley, sworn on behalf of the defendant, testified that he is Associate Professor of English at the University of Michigan, with degrees of Mh. D. and Ph. D. That he has read the book, "The Devil Rides Outside", People's Exhibit #1, and formed an opinion which does not deviate from Professor Bradley's. The book has substantial literary merit and should be placed on the unrestricted list, despite the fact that young people may not be able to understand it, literature being not the only thing they cannot understand. The descriptive vividness present in the work is not obscene, immoral, lewd or lascivious. However, if you take certain excerpts, separate and distince from the work as a whole, they would be classified as lewd, lascivious and immoral, though he would call it a perversion. Further, that portions of the book would tend to incite some minors, but that he did not think it would incite his minor children. Further, he did not know whether or not the book contained matters that would tend to the corruption of the [fol. 356] youth.

John Howard Griffin, sworn on behalf of the defendant, stated that he resides in Mansfield, Texas and is the author of "The Devil Rides Outside", People's Exhibit #1. This book was his first novel. That his education consisted of elementary schooling in the United States and high school and college in France up to the outbreak of World War II in France and at the conclusion of the war he returned to France to resume his medical studies, but was unable to do so because of loss of vision. Thereafter, he did a great deal of work in musicology. That he is familiar with benedict monastaries, having lived inside one and observed the routine of a monk's life. That he has written about five books in addition to the book in question. All novels, except one, which was half fiction and half text, a study of the psychology of blindness. That he is a lecturer on writing, musicology, psychology of the blind, anthropology and agricultural methods.

"The Devil Rides Outside" is his first published novel. There were four editions, all of them substantially the same, and the fifth edition is now coming out in Holland. "I certainly do not feel that the scenes, passages and paragraphs in my book standing alone are either obscene, lewd, lascivious or immoral." On cross-examination, Griffin testified that he chose the sex act as a symbol of all sins because it is an aspect of life that is universal; that he did not have children in mind when he wrote these passages because an author does not have any specific person in mind when he creates; that while the book had been published four times by three different publishing companies, and the different editions contained deletions and changes of words or portions of paragraphs, there were no substantial changes [fol. 357] made. In the British edition of the work, however, certain changes were made which were more appropriate for the British audience and these changes did not destroy the literary quality or continuity of the work for that particular audience. The British edition had 380 changes from the American hard-cover edition, but these included changes in punctuation to correct errors that crept into the American hard-cover edition, but most of these changes were carried over in the Pocket Book edition which followed.

Defendant rested his case and renewed all motions heretofore made in the case, particularly in reference to the unconstitutionality of the statute under which the complaint and warrant was issued, and further upon the ground that there is insufficient proof to establish the guilt of the defendant beyond a reasonable doubt.

The motions as to the constitutionality of the statute and the sufficiency of the evidence were denied.

Upon rebuttal the prosecution called Roy Denial, the Executive Secretary of the Detroit Retail Druggists Association.

Exhibit #1 is the type of book that is displayed on racks, generally up near the cigar counter or in a prominent position in the store so that they can be readily seen by anybody purchasing other items.

Rabbi Morris Adler, sworn as a witness for the prosecution, testified that he attended the Jewish Theological Semi-

nary in New York and received the degrees of Rabbi and Master of Hebrea Literature; also, a degree of Bachelor of Social Science from the College of the City of New York; that he took a graduate course at Columbia University and is now associated with the Congregation Shaarey Zedek.

[fol. 358] "I have read the book, People's Exhibit #1, 'The Devil Rides Outside', and have formed an opinion as to its literary value and as to whether or not some of the material is obscene."

> "Your Honor, my feeling is that this is a serious book, that this was written by a man with a talent for writing, and I think with a serious purpose in his mind. And I, for one, would not be too much concerned about the corruption of the morals of any one who read this book from a literary point of view out from his interest in literature. What I am afraid of is that somehow, word gets around about certain passages that are not read in connection with the entire book, and that would constitute, of course, a different kind of effect. I am persuaded that this is a book of literary merit, and that the man who wrote it was seriously interested in the picking an area of life which concerned him."

As to the obscene passages,

> "I think that if they are read by people who have no interest in literature as such, or in the description of character and background that are found in the book, but simply to seek out these passages, there are passages that are exceedingly stimulating and which taken together with other influences in the lives of young people, * * * may have a tendency to corrupt."

Father Henry Villerot, called by the People, testified that he has been an ordained priest for thirteen years and is presently connected with the Blessed Sacrament Cathedral.

He was educated at the Sacred Heart Seminary, Detroit, and St. Mary's, Norwood, Ohio. He has received a Bachellor of Arts degree and had a regular liberal art course in college. That he had never taught literature. That for approximately eight years prior to his ordination he worked at a summer camp for children on Lake Huron. He taught high school and is now in charge of a young people's group

which consists of high school children. For the past two years he has been assigned to the Library and Literature Committee of the National Council of Catholic Women here, in Detroit, for the purpose of attempting to clean up the literature, both in comic and pocket book form, and even in magazine form, around the diocese of Detroit.

[fol. 359] I have read People's Exhibit #1, "The Devil Rides Outside", and

> "As far as the literary work, it definitely falls into a present classification, modern literature, and certainly has merit in that particular field insofar as I might say, the proper telling of the story that the author intends and his description, and that's what I would say in regard to it on a literary basis."

The witness further testified that he felt it was unnecessary to go into the intimate details of the sensual act and that could have been done without destroying whatever literary value there might have been to the book.

Bishop George W. Baber, sworn by the People, testified that he was the Presiding Bishop of the African Methodist Episcopalian Church in this area which covers six states including Michigan.

He received a Bachelor of Divinity Degree from Wilbur Force University, Xenia, Ohio. As far as particular studies in literature he had nothing more than the general survey which follows through in college seminary work. He has read People's Exhibit #1, "The Devil Rides Outside", and in his opinion it is typical of current realistic literature and it has value, which indicates that the writer has a good mind and pursued his subject. When I say "good mind" I mean a good background of training and he pursued his subject in an interesting fashion. Some passages standing alone border on salacious literature. The writer seems to have emphasized too greatly on the sensual.

The entire questions and answers were objected to by counsel for the defendant on the grounds that the witness was not qualified.

Mildred Seitz was called by the People and testified that she lives in the City of Detroit, attended high school in Kansas City and University of Missouri in Columbia, receiving

[fol. 360] a Bachelor's Degree in English and Journalism. For eight years she taught English, American and English literature and composition in Kansas City and did substitute teaching in the City of Detroit in the field of English. At present she is the President of the National Council of Catholic Women.

She further testified that she read the book, People's Exhibit #1, "The Devil Rides Outside", and in her opinion the book contains literary value in this way:

> "It is very graphically descriptive. It is built like the average modern novel, it has tremendous rises and fall of climax, both in description and in actual recounting of events."

I have read the excerpts, People's Exhibit #2; I would say that the intimate details of the sex act, as depicted in the book detract from the literary value, and I do not think that the literary value would be destroyed if the details were not so graphic. The literary value would not be destroyed if the details of the sex act were not so graphic, and that if anything they detracted from the literary value of the book. In my opinion, based upon my experience as a high school teacher of English, I would think that high school students wouldn't be able to appreciate the literary value. And further, that she thought that the episodes recalled so graphically as they were and so stimulating as they were obscured the purpose of the book.

Genevieve Lola Schooner, called by the People, testified that she received a Bachelor's Degree from the University of Indiana in Latin and English. For the past twenty-four years she has been teaching English to groups of business women in Detroit through the Universal Guild. That she reviewed books for groups, publishers and business women, averaging between twenty-five and thirty books a year.

[fol. 361] I have read People's Exhibit #1, "The Devil Rides Outside", and in my opinion the book has a certain amount of literary value. Referring to the excerpts, designed as People's Exhibit #2, I recognized some of those excerpts as being parts contained in the book, particularly excerpts 48, 49 and 50 and I do not think that if these excerpts were changed, it would detract at all from the liter-

ary value. She did not believe that the intimate details of the sex act and the sensual passions was necessary to the value of the book.

On Cross-examination the witness admitted that in her opinion the book had literary merit, and further, that upon concluding the reading of the book she was of the opinion that the author had confused the issue with his writings. Also, that she felt the author over-emphasized the fleshly struggles in this book which marred the conflict he was trying to portray. She thinks it is a literary effort, but she was not sure about sincerity; she would have to read the book again. The book, as a whole, does not have literary value, but,

> "I was trying to state the things that should stand out, that stood out in the evaluation. That is, those particular passages of philosophy and life in the monastery, and so forth, how it influenced his life. I thought that was well developed and well done."

And in certain details the conflict of the author's life was well developed and well done, as well as a great many of the characters. And there was an interesting and stimulating accounting of the benedictine monks and their principles.

On re-direct examination the witness testified that the dominant theme of the book "is the conflict between sensuality and right living, and the life and the spirit".

[fol. 362] Professor Charles Carroll Hollis, called by the People, testified that he was the Associate Professor of English Literature at the University of Detroit. He did under-graduate work at Marquette University, University of Wisconsin and St. Louis University, and graduate work at the University of Michigan in Ann Arbor in English and American Literature. That he had been teaching at the University of Detroit since 1938. That he has reviewed books and different magazines and literary articles. That he has read People's Exhibit #1, "The Devil Rides Outside", and in his opinion it is a well intentioned book that is not completely successful in its literary intentions. Referring to the excerpts contained in People's Exhibit #2, I recognize them as being parts of the book. As to these

excerpts adding or detracting from the literary value or merit of the book, is difficult to answer. It is not the material in the passages, it is the handling, it is the way in which the passages are treated. The author could have handled the scenes described in the sex act in such a way as not to have been so offensive. These discussions are not connected with the novel as a whole, but are a separate spirit to the sexual appetite of the reader. The witness likened the book to Daniel Defoe's "Moll Flanders" which he stated was written for the market and had sex passages inserted to permit the reader to vicariously enjoy things he could not enjoy in life.

He stated that he might perhaps recommend the book to his graduate students in order to study it for the values that they could get out of it, related to other literature and other aspects of literature, but that he would be very cautious about recommending it to under-graduate students because there are passages in the book which would arouse sexual appetite on the part of the students, and there is no way in which this can be satisfied normally.

On cross-examination the witness testified that taking the book as a whole he did not think there was sincerity of purpose in the work, whatever the intentions of the author may [fol. 363] have been. He agreed that the author may have intended to write a noble work. Further, that the witness might use this book and present it to his graduate students where he wanted to demonstrate something to the students and he would read it for that purpose, especially in the teaching of literature and in the differentiating of different subjects and the handling of different subjects.

The people rested. Defendant renewed all motions made at the beginning of the case with respect to the unconstitutionality of the statute; moved that all testimony dealing with excerpts of the particular book be stricken from the record; moved that the defendant be dismissed because of the failure to establish his guilt beyond a reasonable doubt; renewed all motions during the course of the trial to the same effect and force as if specifically restated.

All motions were denied by the Court.

[fols. 364-366] OPINION OF JOHN A. RIOGA, TRIAL JUDGE

[Omitted. Printed side page 330 ante]

[fol. 367] OPINION OF THE COURT DENYING MOTION FOR NEW TRIAL

[Omitted. Printed side page 341 ante]

[fol. 368] PEOPLE'S EXHIBIT "2"

"THE DEVIL RIDES OUTSIDE"

Author: John H. Griffin
Publisher: Pocket Books
Distributor: Ludington News
Withheld: 2-26-54

Excerpts:

Page 4 Those damned sons-of-bitches in our government!

He explains with luminous pride how he personally, after having first explored each girl's potentialities to the fullest, saw to it that only the most interesting and accomplished of them stayed on to satisfy the physical needs of his clients.

"Nowhere, nowhere, M'sieu—not even in Paris—could you find such wonderful girls at such reasonable prices."

"Too bad I didn't come here sooner," I tell him.

I offer him another cigarette and he cranes his head in my direction. His face, reflected in the lights, is sober. "Listen, my friend," he says urgingly, without taking the cigarette from his lips, "I know some girls in the City. Let me drive you there and we can each get one for the night."

Page 8 Lips seen close with their fine ridges and their wetness, and the feel of a belly against your belly, of a belly beneath your mouth—moving, live, warm.

I look at the straw mattress of my cot and at its covering

roughness of blanket, and I remember the good bed and white linens of last night, and how they covered a nakedness of breasts and navel and warm thighs, and smooth, sweet-smelling flesh of shoulder and back. And I am sick for wanting the safety of that bed, for wanting to breathe the breath of another and to wake in the night and feel her against me.

Page 9 Sometime in the night I awaken and reach for covers which aren't there. In a half-dream I feel for the crease of her belly and find only the unyielding stiffness of evil-smelling straw beneath the rough muslin mattress cover. Sleep is a torture of discomfort.

Page 26 "M'sieu!" he says reproachfully—"please! I'm not a pimp, after all. Slightly tinged with pimpishness perhaps, but never sinking to such depths, really. If you think——"

Page 27 "I don't think you like to sleep by yourself. You're as bad as I used to be. I bet if I could find you a nice, sweet-smelling girl——"

Page 31 "These bastards! These ignorant bastards!

Page 32 She is completely sexless—the sort of woman with whom one sleeps, with whom one makes love merely because she's there beside you and it's easy to do. Above all, the sort of savagely fecund creature who can't be breathed upon without becoming pregnant.

Page 58 Instead of the stain of last night's dream, there is the brightness of freshly washed and ironed sheets. One of the monks has changed my bed and knows of the secret dream, and of the fever of the night.

[fol. 369] Page 65 I long for Paris—to be warm, and to get drunk, and to be happy and shallow, and to know a bed and a woman, and to hear noises and see lights . . .

I leak on the ground. It makes a terrible noise; it seems I shall never finish.

Page 78 I think of sleeping warm sleep, with an arm thrown across the soft belly of my Lucette.

Page 80 Tell me, do you ever hear from that girl of yours back in Paris?"

"Not a word."

Page 81 He grins. "Just like I told you, she's probably with somebody else. How long you been without a girl now?"

"Six weeks, about.

"Oh, la! That's a long time. You must be bursting."

"It's too cold to burst, Salesky," I laugh.

He leans his head close to me, grinning. "When you were in Paris, for example, did you ever go to the Bois de Boulogne at night?"

"Naturally. What student hasn't?"

"The best in all Paris is in the forest there. And free, too," he nods. "A man can get any kind of girl there."

I say nothing. The road is covered with ice and Salesky's cab moves still more carefully. He stops for a moment to relight his pipe.

"Tell me, M'sieu," he says above the shifting of gears, "while you were with your girl did you fool around with anyone else?"

"No!" I answer sharply. "What kind of a person do you think I am? She was a nice girl and I never thought of going to anyone else."

"Honest?" He sounds incredulous.

"Honest. I was absolutely faithful to her. Oh, occasionally when she was spending a week end at home I'd find myself another girl, but not often."

I have a girl friend on this side of the River—Made Rouen, she runs a little spice shop. She's given me two children, which is more than my wife ever did. Is it bad for a man to love his wife and yet want children by another woman?" His face becomes serious. Opening the window he empties pipe ashes outside.

I don't answer.

"Anyway," he goes on, "there's not a woman in the Village who wouldn't like to have me in her bed—or you, M'sieu, or any other Page 82 man. But they're mean. They dream of it and condemn me, Salesky, because I've done it with somebody else. I tell you, it's a devil's paradise here."

"I can't believe that, my friend. These people seem all right. Besides, you'd be talked about anywhere in the world for keeping two women to sleep with."

"Would they run and tell my wife?" he says angrily. "Would they keep watch on my mistress's house, and count the times, and run tell my wife? No. But that's what they

do here. They're bitches. Oh, there are a few good ones here, but they keep to themselves." She associates with the other bitches without being a bitch herself . . . Ah, look at that pretty girl there. Don't often see one that good-looking."

He jams on the brakes. The car skids to a halt near a young girl walking with her back to us. She turns and walks hesitatingly toward the car.

"Look at that, M'sieu," Salesky whispers rapturously. "Those little breasts—how'd you like to have a handful of [fol. 370] that, for Page 82 (Cont'd) example?"

The girl approaches his open window and he asks, in an exaggeratedly lecherous Parisian accent, if we can't take her somewhere.

She giggles a flushed refusal, and we drive on.

"Salesky, you fool, you embarrassed the poor kid half out of her wits."

"But no, she was pleased. Couldn't you see that? She'll be lost in daydreams all week now, thinking of a big hulk of a man like yourself. At night she'll lay against her pillow, imagining it's you. We did her a favor, I tell you."

"You bark loud, my friend," I taunt. But I bet you'd have been lost if she'd got in with us."

"Oh, it wasn't for myself, M'sieu," he grins. "It was for you.

Page 83 You could've cooled her off a little in the back seat. You could've sprinkled her little garden for her, eh?"

"Look," he says, "be a good boy and do me a favor."

I hesitate, holding the door half-open. "Sure. What is it?"

My girl lives across the way, and I don't get to see her often. I'm always watched. But the streets are deserted now. If you were to stay in the car while I went in, none of these bitches would suspect. I'll make it short, M'sieu, just a few minutes."

Page 84 "Wasn't she there?" I ask.

"Yes, she was there."

"Was something wrong?"

"Not at all, M'sieu. Didn't want to keep you waiting in the car. Thanks a thousand times for helping me. It was wonderful—but quick, eh? Quicker than you could have

handled it, young buck that you are. I didn't even take off my coat, M'sieu."

"Yes, without taking off my coat. 'Onto the bed with you!" I shouted at her. 'Onto the bed, my belle!' And zoom! her needle was good and well threaded. Wonderful how these things work, eh?"

"Oh, shut up, shut up. No one else could've talked me into such a thing. But if you need a witness let me know. I'll swear you were under the car all the time."

Page 94 "Also, there's a girl in Paris, Father. We lived together as students years ago. And when I returned after the war we got a flat together. It's impossible for me to be in Paris without eventually going back to her."

From the warmth sitting beside me the voice asks quietly, "You do not think she would understand, my son?"

"Yes, she'd understand, I reply, "and approve. It's not her fault. It's mine."

"Perhaps you could marry her?"

"I suppose I could, but it's not like that, Father. We aren't in love. We're just used to each other. We pool our money, and she does the cooking and washing. She's still in art school. It's always been a convenience for both of us. Two poor students can live well that way. We're good comrades, we sleep well together. But she doesn't want me for a husband and I don't want her for a wife."

"Have you had no children with this arrangement?"

"No, Father. We've been careful."

Page 104 When a man loves a woman, then—and only then—will the climax come in the performance of the sex act and not in the contemplation of it.

[fol. 371] Page 115 I look at her and I want her. I want to have her in a filth as great as the filth of my feelings. But she leans forward, and I know the stink of her fat folds. Without speaking, I leave. But the harm has been done. My legs become weak, and my face burns with the uncontrollable desire to find something to take into a bed.

Page 116 It must be very difficult, Madam," I say to her, fighting to keep my voice even, "when once you've been married, to get used to living without love."

"Ah yes, Monsieur," she says softly. "It is—very difficult."

"That relationship between a man and a woman can be made such a beautiful thing," I say musingly, and then, forcing deep sympathy into my voice, "I've never been married but I've had many girls, and I know what it can mean. I've always thought of it as a great privilege."

My stomach prods me to hurry. I know my way on this ground. I am at home with such disconcerting inanities. But this is too rushed, too obvious—too laughably obvious.

She smiles, looking at her cup. "You're quite a Don Juan, Monsieur. You embarrass me."

"Not a Don Juan at all, Madame. I'm just giving you credit for being what you are—a beautiful woman of the world. But you must Page 117 forgive me. I'm being honest. I think we both want the same thing, and I think we can help each other. If I'm wrong I apologize."

"You're really very nice, Monsieur"—nonchalantly, with ease and grace of manner. "Perhaps we could have dinner tonight?"

"That would be fine. But look, I must return after dinner and we have an afternoon before us. Let me get a room at the hotel where we can be warm. We can visit there until dinner time."

My eagerness catches her, coloring her throat into a blush with the beginnings of desire. She smiles a yes without answering. I pay the two checks, take her arm, and we go to the hotel. The hotel keeper and his wife, who remember this young man, smile openly, delighted at my luck. They give me a room with bath and have the grace not to mention that we have no bags. My warmth toward them grows.

The room is heated—blessed heat. I help off her with her wraps, with the touches such closeness indicates. We sit on the bed and light cigarettes, feeling frozen feet beginning to come to life. The actors of the play continue acting, for it's not yet the time when acting can cease. With a loud but honestly felt sigh, I take her hand in my own to study it, and her pressure answers mine. "You don't know what it means to hold someeone's hand again," I tell her.

"I feel the same way. You're very sympathetic, my friend." She glances up at me—quickly, half-tentatively. "And you're very beautiful."

We fondle hands and then arms, until words dies in a vast, sobbing, all-engulfing joining of our mouths. The approach is forgotten as the kiss becomes its own fever. Burning outpouring of her tensions into me and mine into her, resolving all tensions into the health and strength of ministrations from a common source. Our breaths catch like two people who drink too long after great thirst. The feverish intensity of starvation flows out from us and we relax our bodies, fainting against each other in relief as Page 118 muscles melt and the kiss insinuates itself as a pure line of pleasure between us. Now the cauterizing ini- [fol. 372] tial healing has Page 118 (Cont'd) taken place. Now the therapy of a needed kiss is accomplished. Now we can take pleasure one from the other. The dissonance, the ugliness leaves, and a clumsiness of beginnings gives way to the ineffable grace of animal responses. As the soul is purged of its hermetic smallness, of its grit of modesty, the demands of our bodies become more powerful.

Breathless I lift my face from hers. "I can't believe it," I gasp. "I've never felt like this before—never. It's almost like we're really one. Do you feel it too?"

"Yes, yes," she murmurs passionately. "Yes."

I hold her there in wonder, tenderly stroking her cheek, brushing the fine blond hair back from her forehead: small movements of waiting, movement of suspended dimensionless. And at last her breathing subsides against my breast, and my hands stop trembling. Reality slowly returns to the room.

"Now," I urge gently when I feel I can speak, "you must let me go and take a bath. I should have done it before, but I didn't know we'd meet. You can rest here on the bed."

"Can't I help you?"

"No, I'd never get through if you did. And I'd rather come back to you here in bed."

Leaving the bathroom door open, I throw my clothes on the floor. While the hot water is still running I step into the tub. The soap spreads and cleans. The nearly forgotten luxury of soap bubbles on wetness of skin is enchanting. I soap and rinse again and again in the warm water. There is no longer any struggle between my two selves. We're both very happy. Poor Father Clement! I smile, imagining

that he imagines me in a movie. "You're awfully slow, my dear," comes her voice from the bedroom.

"Are you in bed?"

"Yes, and I'm lonely."

"But I haven't had a bath in three months."

"Oh, la! Then take plenty of time."

Page 119 I splash about in the water. "Come in here, won't you?" I call to her. "I need some help."

She enters the steaming room, with a sheet around her, to find me lying in the tub. "Ah!" she exclaims, "that's pretty, for example."

"Would you please wash my back?"

"With pleasure, M'sieu." She says this in imitation of the broad patios of the farm women. "But how can I wash M'sieu's back unless M'sieu turns over?"

I turn on my stomach in the warm soapy water. In silence she scrubs the length of my back, seriously, as if I were a child. I turn back over, splashing water onto the stone floor.

"Thanks very much."

"Not at all. And I was good about it, eh? No tricks."

"You were wise. It's been a long time since I last made love. I'm very delicate."

She changes the subject: "Tell me, how do you bathe in the Monastery?"

"In a little tub—a foot bathtub—a little at a time. But the cells are unheated and it's impossible to bathe in this weather. But I would have anyway, if I'd known we were going to meet." "Today is the Feast of St. Hilaire. You wouldn't bathe for him, but you will for me. I'm flattered."

"I doubt if he'd have appreciated it as much as you will. Now if you'll please leave, Madame, I'll dry myself."

"Strange—you let me wash you, and you don't have have anything on in the bathtub; and yet you want me to leave while you dry. Why is that?"

[fol. 373] Page 119 (Cont'd) "I don't know. It just seems to work that way." The smiles stop. With the end of my bath approaches the instant of consummation; the beginnings of nervousness in both of us. She returns to the bed.

When I am dry I turn to go to her. Breath catches in my throat, and I run to the bed. Without looking, without

thinking, I draw myself into it, under the covers and into the oblivion of her body. We lie close, discovering in blind embrace the secrets of the warmth within us. There's no time and no reality as arms Page 120 bring tightness to our embrace, as our stomachs press together until they dissolve into one. No longer do we kiss only with our mouths drinking each other—our arms, our legs, our stomachs join in the kiss, becoming fused in a caress that envelops all. Hands descend the length of warm flesh, till they come to rest in the fleshiness of buttocks, the very feel of which fills us with profound drunkenness. Hands search further into our innermost selves, and without losing the thin fine line of sensuality that floats through closed eyelids . . . we become slowly united. No longer a man and a woman, but a revolving bodiless emotion. Deeply, more deeply into the liquidness of her, into the void of swirling sensation. Slowly like the waves of a warm ocean, inexorable, undulating out of space and time. Blackness and silence in the roaring of two become one. Angles, brilliant behind eyes that swim in detached body, floating in space. Richness and warmth and coolness of the wet on one's lips. Lips against her face feeling skin pores. And smoothness of soft cheek and shoulder. Squares mist milkily, and from the stillness and the dark the curve mounts immutably rhythmic, in ever-mounting intensity. A new gathering of momentum. And through the darkness an occasional glimpse of concentrated white. Now it begins to grow, this strangeness, turning over and over. Slowly, slowly, turning steadily, and the rhythm follows ever growing. And now from the very bottom of a faraway numbness is the quivering beginning of trembling. It's unbearable. The numbness is punctured. Momentum gathers. And the long sigh, unheard, pouring forth from the edges of consummation. From a distance, far within, curving swiftly now, a fast sighing swaying motion curling over and above and around. Beating, beating against the drum of the being, pounding louder and louder till there can be no more loudness, but increasing steadily into the very pulse of the blood. And now before the eyes, the before-hinted, now-brilliant flashing white, growing and expanding to break spattering against eyelids. And from without, a fog of ever-thickening

intensity, sparkling and harsh to imagined sight. Simultaneous welling-up of the heaving exploding brilliance, and the beating, now-pound- Page 121 ing rhythm piling sound and muffled obscenity, ever expanding above and around, turning faster and faster above the moaned "No! No!" Tightening of the heartbeat, drawing-up of the ribbon. Ecstatic point between life and death when all becomes hermetic and rigid. The pause in space without pausing in movement. The waiting without breathing. The muffled upward surge of the entire being to the crest of the wave, to the very top. Up and up, soaring high onto the peak of noise and heat. The whirling gyrating splash of warning to the mind. Louder now into the head and the brain. Upheaved violence of the belly. This is the flashing of the stars, the cleansing burning of the insides into fervent ash. And the taste of blood grows stronger on the rigid tongue. Finally the broad expansiveness of union, of man's warmness without pain. Sounds [fol. 374] descend thinner, slower, draining away to Page 121 (Cont'd) sighing quiet. And the felt pulse of the rhythm faints away to enveloping blackness. The slow easy downhill slide with a final unheard catching of the breath, leading onward and downward until the curve slows to stop against the dark. And down, down again slantingly, quietly to a depth beneath the seas. Beyond movement to stillness. Then the loosening, the resumption of breathing. Gratitude, and the serenity of silent waters.

Heads fall apart. Light returns. There is rest now without moving. Rest with the body spent, the head facing down on the pillow of her shoulder. Rest for a long time without becoming separated, feeling only the warmth of her breathing and the stir of her hair against my cheek. Life returns. The room becomes real. Without moving away we roll to our sides, still tightly clasped. And we sleep.

For how long I don't know. Without awakening I find myself awake, still enclosed in her arms. She breathes heavily in her sleep. We are no longer united. The room no longer moves. It remains quiet in its smallness, telling the tale better than we could tell it.

The gray light of winter's afternoon filters through the dusty lace curtains beside our bed. A rug on the floor has lost its color through wear and the accumulation of dust.

It is a thin, Page 122 pathetic covering for the blackened wood floors On a gold-fringed overstuffed chair near the window, her clothes are draped-pinks of underclothes and darkness of hose hung neatly over the arm. Through the bathroom door can be seen my clothes, in a filthy pile where I left them. And on the tub a roughness of damp towel hanging at a thrown angle.

Room of heavy shadows lighted only by somber afternoon, and soundless. A room which would be intolerable if I were here alone, but which has taken on a fattish, conniving atmosphere because I am in bed with something human, with something that lives and breathes and sleeps.

In her dreams she turns on her back. My head rests on her shoulder beneath the blankets. In the microscopic perspective of nearness the coarsely woven pillowcase, white and wrinkled, is brought into clarity of focus. Every thread can be seen, and minute portions of brown starch-stain streak the pattern of freshness. The eye shifts to shoulder flesh and focuses on an inch of skin, seeing pores and smoothness and oilness and one speck of dryness that irritates—white, flaky, dead. Moving my cheek against it I brush it away. My head cradled on her shoulder is half-covered with the blanket. We lie here warm and drying—and she sleeps.

Smells from under covers, smells when sight grows tired. Odors of neutral nakedness of flesh. Odors of shoulder and belly and of the dried hint of frenzy, mingling with those of blanket wool and coarse linens. Odors of the sweetness of unperfumed being, captured in a warmth of darkness beneath covers. Profound satisfaction of the senses by touching and breathing, and the sleep of a body in the arms of wakefulness. I raise my leg across her thighs and lie close to her, with the inside of my leg, above her knee, resting on her stomach.

Without opening her eyes she murmurs drowsily, "You're suffocating me, my friend."

"Oh, I'm sorry. I didn't know you were awake." I raise my head. Her eyes open to see a face that has lost its strain, and she smiles. "Are you happy, my darling?" she asks.

"It was marvelous. Shall we go again?"

[fol. 375] Page 123 "No—some other time perhaps. The next time wouldn't equal the first and we'd both begin to regret it."

"But I want you."

"No, please—don't." she reaches down and moves my hand away.

"All right, my dear," I say coolly. "Then let's get up. I can't lie here with you without trying."

"Yes, go into the bathroom and dress, she says almost apologetically. "I'll spread up the bed and get dressed myself."

"Fine—so modesty returns. Very well, Madame, up with you."

I go into the bathroom, sickened at having to put on my filthy clothes again. We continue talking as we dress. Gradually with the ebbing of desire, my resentment leaves. I become conscious of a growing gratitude toward this woman who has given me so much.

I call through the door, "I'll treat you to the best dinner in town—all you can eat. This hotel has excellent food."

She joins me in the bathroom, standing before the mirror combing her hair. I'm supposed to take dinner in the Village," she says through a mouthful of hairpins. "Maybe we'd better go back."

"Nonsense, don't tell me you're the sort who like to make love and run?"

"No, but food is high here. There's no need for you to spend any more on me."

The thought that I have bought her only a coup of hot chocolate strikes us both as ridiculous as we laugh like two children.

"Ah," I chuckle, "two and a half francs. You're an expensive woman. But I'm a perfectionist. Unless I fill your stomach from the top this time, I'll feel my work is only half-done."

"You are a pig . . . But really, let's eat somewhere else. These people would think me brazen. They'll suspect what we've been doing."

"And for once their suspicions will be justified. No," I grin, Page 124 "we'll eat here and give our friends the pleasure of being right about us."

"But I'm not a brazen woman."

"I know you're not, my dear. But the point is, you've been doing all afternoon just what a brazen woman would do."

"You embarrass me." She is offended. I have gone too far.

"Come now," I say softly, "I'm only joking. You know that. We'll eat wherever you like. And believe me, I want to take you to dinner because I like to be with you, and not just because I'm grateful.

She lifts her face and smiles. "All right."

"Now, shall I keep this room for a few days? We can come here every afternoon."

"But what about your work at the Monastery? Surely you can't leave that? Didn't you tell me your work was your life, your only passion?" The suggestion of a smile is at the corners of her mouth. "Isn't that what you said?"

"Yes, but not all my life," I mutter, feeling like a fool. "And I find I have other passions, too."

"Even so, I don't think we'd better keep the room. I must tell you, as much pleasure as this has given me and as wonderful as it's been, I'm here for another purpose. I'll confess what we've done, receive penance, and make every effort not to do it again."

I shrug my shoulders. "You're probably right. This couldn't be helped today. I know what you're trying to do and I respect you for it. I'm afraid I've set you back. But it's easy to be virtuous once passion is satisfied. I feel pretty Christian right now, myself. But what shall we do [fol. 376] when we feel it again? Can Page 124 (Cont'd) what we've done be so terribly wrong?"

She is silent a moment. "I don't know," she hesitates. "But I'll do as the priest says."

We walk down the carpeted stairs to the lobby. I stop to pay the bill while she waits in the hall near the entrance.

The proprietor feigns surprise when I approach the desk. "But, M'sieu, you arrived only a few hours ago. We can't charge you for a room you've scarcely used. No, there'll be no charge.

We'll just put someone else in the room, and since you

haven't Page 125 slept in the bed we won't have to change the linens."

I put some bills on the desk. "Here, take the money and an extra twenty-five francs for the chambermaid."

"But, M'sieu, I don't understand. Since you haven't slept in the room, what will the chambermaid have to do?"

"Believe me, my friend, the room has been well used. And the chambermaid will more than earn her twenty-five francs."

He would like to know more, but I turn away and join my companion at the door.

Page 141 At this hour yesterday we woke in the same bed from a naked sleep; and now it might never have been. At this hour twenty-four hours ago I smelled her shoulder beneath my head, and my hand cupped the naked smoothness of her sleeping belly. Tonight she is cleansed of this and it's never really been. She prays there now—but can she forget a kiss in the small of her back? . . . Lips become dry and I wet them, exhausted. Turning, I listen and forget this bodiless emotion clutching a blackness of rosary beads back there near the door.

Page 141 I've been one month now without my wife. That's a long time, eh? Only once have I had a woman, and that was because my friend the ambassador wanted me to go with him. We got two girls, good-looking girls, and I examined them. The one he had chosen was eaten up with syphilis, so he didn't get his after all. I managed mine all right, but it wasn't any good."

Page 154 "Ah, you are drunk. Your Lucette's at this minute. Forgetting your weight beneath the weight of another."

"Good for her. I'm going to bed."

Page 166 "I can't make you out, Doctor. One moment you're a mystic, in love with something intangible to the point of being poetic, and the next moment you want to get me the worst old whore in the Valley."

Page 172 'No, thank you, I don't drink,' or, 'I don't fool with women' (heaven help him), or, 'I don't smoke.' He's a paragon of virtue who's reduced to a nothing by the moral castration of pride—pride in the ability he has to stand alone and above poor bastards like us.

Page 173 His voice falters, steadies itself, becomes another singing monotone as the author tells of the unwrinkled firmness of Salome's body and of the fullness of her milk-white breasts, intoxicating to both hand and mouth.

Page 186 so I went directly toward the brothel. But this time I was accosted by a pretty girl in the street, and I accepted her quickly before anything could happen. We went into a hotel near the Bibliotheque nationale and got a room. She seemed very nice and I knew that nothing could happen this time to stop it.

[fol. 377] Page 186 (Cont'd) First, however, she took all my money—every penny of it. When she had the money she took off her blouse and chemise, but to my horror her body from breast to hips was swathed in heavy tape. She told me she could not do it in the normal way. For some reason I cannot explain I burst into laughter—I roared with laughter. Here I had spent all my money, built up my hopes and my sins, and she destroyed my desire with her broken ribs and her unnatural suggestions. I asked her for my money back, but she refused to give me even car fare home.

Page 190 "My friend, I'm without nerves. I've been out slutting all morning." He makes an easy gesture with his hand, smiling, as if he'd just finished with a woman. We're both satiated with sanctity. Our beings cry for relaxation in the comfortable atmosphere of ribaldry.

"Was she a blonde?" I ask, carrying the upswing of good feelings.

"A blonde with hair combed on top of her head, and a Parisian hat?"

"Precisely. She was your friend from South Africa. Ah, and you ask me if I have nerves . . ."

"So, you forget your duties toward me to go after my women! And I thought you said you'd rather tie my shoelaces than be between the legs of the most beautiful woman in Paris?"

Page 191 "There you are," he says. "Clean-shaven as an expensive whore."

I run my fingers lightly over the raw skin. It is smooth and hardens uncomfortably beneath my touch. "I wouldn't know. I never went to an expensive whore."

"You don't know what you've missed," he grins. "But

then I guess it's not too different from your cheap ones."

Page 194 And in lower circles we adapt ourselves. We laugh at all that crap. We agree that niggers are just as happy as if they had good sense, and that they were a lot happier before people Page 195 started putting ideas in their heads about human rights. We agree that whoever happens to be president is either a son-of-a-bitch or a god-send. We laugh and admit it's not normal for a young man to be without his little ass every once in a while, and that the girls are just waiting to go out behind the barn with us. Or we stand upright and announce that this younger generation is wild as hell, that we weren't brought up that way.

Page 198 I remember how I used to sneer at my friend Louis for sharing his flat with a girl student.

"But it's the only way," he would explain. "No one in school away from home can afford much by himself. But if you can get a nice girl, together you can live well. Monique and I pool our money. She does the cooking and washing, we both do our studying, and we sleep together. It's the best possible arrangement, old man. Together we live twice as well and a lot cheaper.

But Louis, how can you get any work done? Or do you neglect that part of it?"

"No, no, you don't understand. We're students, our studies come first. We don't fool around with each other till we go to bed, and then just once each night. And tock! we're happy and content. You must try it too. I'll ask Monique to find you someone."

Page 199 She asked bluntly, "Tell me, are you a virgin?"

I hesitated, and a flush rose slowly to my cheeks. "No..."

[fol. 378] Page 199 (Cont'd) She and Louis exchanged glances while I looked at the floor. With his laughter in the background she shook her finger mockingly in my face. "Why, you are," she cajoled. "Now tell me the truth."

"Well, all right." I smiled sheepishly. "Don't rub it in."

"Seriously," Monique went on gently, "you say you haven't been brought up that way. Well, neither have I and neither has Louis, and neither has this girl at school. But it's the only sensible thing, and it's worked for us. Now,

let me bring her here to meet you. She just came to Paris a few months ago and she's never been with a man."

"All right, Monique," I acquiesced with a sigh. "May all my maiden aunts forgive me."

Page 200 Very well," she murmured hesitantly, "let's try it for a while. I think we can get on together."

"Bravo!" shouted the irrespressible Louis. "We'll celebrate the nuptials. But first I'll tell you the rules. Remember you're both students, so studies come first. If you start making love three times a day your studies will be ruined. So you make love only once, and that's at night after all the work's been done."

"Oh, shut up, Louis," I laughed. "We'll work that out ourselves." We laughed easily, for there were four of us.

But the next morning, when we had finished moving into our flat and were alone together for the first time, there was a heavy timidity between us. I tried to overcome her doubts —which were also mine.

"Now look, Lucette, we're going to try living together. Neither of us has been around very much or had much experience. I'm willing to do whatever you like as long as I get my work done. If you want to make love I'm here; if not I won't bother you. It's bound to happen sooner or later because we're sleeping in the same bed. But I promise I won't do anything against your wishes.

"But I have no right to refuse you," she said. "After all, you're taking me in.

"No, I'm not. You don't owe me a thing. We're sharing the flat and the work, that's all. I think boys probably like this sort of arrangement better than girls do. That's the reason I don't want to do anything you wouldn't like. Shall we just let things work themselves out?"

"You're very nice," she said gratefully. "Yes, that would be best." And my own relief, unspoken, matched hers.

Page 201 "She hasn't come in yet, she's still at school." We burst into laughter, shaking hands. "Ah, this is marvelous, Louis. I can never thank you enough."

"There's nothing like it, is there? Having your own place, paying your own bills, doing your own shopping, and——"

"Having you own babies?"

"You haven't got to her already, have you?" he asked with concern.

"No, but look—I'm as dumb as anything about these things. What must I do to keep from getting a baby?"

"You dumb bastard, it's a good think you asked." He reached in his pocket. "Here, take one of these and use it tonight. Tomorrow I'll get you some pills for her."

"You don't think she'll mind if I use this thing?"

"If she's as ignorant as you she won't even know it. Anyway it'll only be for one time. The pills are a lot better. [fol. 379] Do you think Page 201 (Cont'd) things are going to be all right"

"I don't know. She's awfully nice, but from the way she talks I don't think she's too anxious to go to bed with me. I promised not to touch her unless she wanted me to."

"Oh, no!" Louis moaned, holding his head. "A girl like her isn't going to come right out and ask you to do it. You've got to make the try, and then if she's not quite ready, why all right. One thing, though—a little advice. It might hurt Page 202 her. If she acts like it's hurting her, just stop. That way the pain'll go away and she'll enjoy it."

Each scrupulously ignoring, but carefully watching, the other, we changed our outer clothing in the bedroom as nonchalantly as an old married couple. Our small talk was casual and full of delight. Without embarrassment she gathered up my shirt and pants and put them on a hanger in the wardrobe, murmuring some- Page 203 thing about washing them the next day.

"You know, my friend, I was just thinking," said Louis, serious in his role of confidant and adviser—"when did you last have a bath?"

"It's been over a week now. What do you do for a bath in the flat?"

"We bring a tub into the kitchen. But you can hardly do that in front of Lucette when you haven't even slept with her. It's very important, you know. She won't like it if you aren't clean and good-smelling. It'll spoil it for her." He stopped and turned to me. "Why don't we go to a public bath right now and get you cleaned up? Later on, when you've got used to each other, you can bathe in your kitchen."

"But I can't afford those public baths, Louis. You know that."

Page 204 "Nonsense. It's only three francs, or two and a half if you get the shower. I tell you what: you go to that bath across the street and I'll get a cheaper bottle of wine. Here's two and a half francs. A shower will be good enough and it won't cost as much. But take a good one. Wash several times with plenty of hot water. I'll come for you when I find the wine."

At the entrance an old crone collected my money, complaining because I didn't have enough to tip her. When I had finished my shower I pounded on the door of the stall and she brought me a clean towel, suggesting that a youth of my obvious qualities should have a girl and she knew just the one. Laughing, I chased her out, telling her that if I couldn't have her I'd have none of her proteges.

Suddenly Louis asked thoughtfully, Have you two kissed yet?"

"Not yet."

"Then you must do it right now. Go on, go on. I pronounce you man and mistress as of now. A nice kiss."

Later, for no apparent reason, Monique burst into laughter.

"What's so funny?" I asked her.

"I was thinking of our poor maiden aunts."

Page 205 "Oh, no!"

Louis raised his glass. "To the maiden aunts," he proclaimed, and took a long swallow of wine. "Think of them," he went on, wiping his mouth. "They are, I imagine, warty and bulbous old things, at this moment asleep hugging much-battered water bottles. No, no, wait, let me think—that's no fitting desecration of maiden aunts. They're probably covered with stiff hairs in the wrong places." He turned to me. "When we're doctors, my friend, we must pledge each other we'll pluck out all the hairs from wrong [fol. 380] Page 205 (Cont'd) places on warty old maiden aunts."

"Louis," Monique admonished, "you're impossible and unrefined. Why do I stay with such as you?"

"Because of the children, remember?"

"Oh, of course, because of the children we'll have one

day. Did you know, Lucette, that Louis and I have decided we're in love? Yes, we'll throw away the pills one day and become respectable married people."

Page 206 "Well"—I faked a yawn—think I'll go on now. How long will you be?"

"At least two hours. You go on to sleep."

My cheeks were on fire. She didn't want it. She was studying late so that I'd be asleep when she came to bed. Controlling my disappointment and embarrassment, I murmured, "Tell me, Lucette, do you want me to stay awake and wait for you? I must know. If there's a chance I'll stay awake, but if you say no, I'll forget it and go on to sleep."

She didn't lower her eyes. "I'm awfully sorry. I have an assignment of drawings I've got to get in. What shall I do? Do you want me to wake you up when I come to bed? If you want me to I will."

Page 207 Later, in the middle of the night, I awakened to hear her quiet breathing beside me. She was asleep, and we were in the dark, in the warm dark night of our new home. We were alone—two people breathing in a single smallness of surroundings with only the intimacy of our bed and our sleep-drugged bodies. And outside, all the city of Paris lived its nocturnal life in a million different ways. In the flat all was lost. There was no longer a living room and a kitchen. All was lost in darkness except what we could feel, except the immediate now of bed and covering and air. I lay there not touching her, happy to hear her even breathing, to know that beside me this living warmth of a stranger—a young girl with breasts and belly and knees and heart—was mine without my having yet possessed her; a stranger of whom I knew nothing but who was with me in the same bed, safe from the desolate loneliness of the world of humanity about us. We occupied our tiny space within the cellular framework of a great city. Others lived and slept and ate and wept above and below and on all sides; but we were there alone, hidden from them as they from us, with our own steams and pains and joys and inner liquidnesses.

I rolled against her in the dark. She allowed her body to relax in my arms. She did not turn nor pull away. She

was warm. A warmth of sleeping flesh covered with night clothes, drugged by sleep, without thought or intention. The night was a vacuum permitting instincts to dissolve the counterpoint of background and timidity into pure feeling. Our arms found one another and we lay a long time face to face, with nothing but the softness of her breasts to give me consciousness. We slept again fitfully, automatically clasping each other against the unknown which lay beyond our bed in every direction. Finding delicious quenching Page 208 safety in the embrace. Breathing pure smells of clean bedclothes and clean night clothes and tiny spots of bareness. Again we slept, and awoke twisted. The bed creaked as we straightened clothing with an understood union of movement, and settled once more into the sleep from which we hadn't really awakened. Comfortable, fitting close. Warmth of arms under arms, of legs between legs, of the nothingness of stomachs separated only by wrinkled cloth.

[fol. 381] Page 208 (Cont'd) Gradually through the night—imperceptibly somehow, without beginnings—clothing which separated us was unbuttoned and pulled aside. In a dream, unconsciously, legs found their comfort. The wetness of too much covering formed where flesh heated against flesh. Lips touched lightly, growing stronger but never really strong. Hands fumbled with flimsy night things. In the dumbness of night the tension of these half-gestures grew. We tightened our clasp and soon were pressed side by side. There was a stabbing of liquid warmth. Nerves and muscles relaxed to become tense again. I knew the waiting, the inevitable seeking of man's insides to become woman's insides as the embrace brought us without touches into greater tightness . . . until we were united. Until there could be no more pressing of stomach to stomach. Until the fullness of one became the fullness of the other. Clasping with no need of movement, with an inner deliciousness of drunken newness that throbbed and was concentrated, that searched and was feverish. The brain descending from head in a giant curve, deserting head to take its place in a contracting belly. All lines of feeling leading into the darkness under covers. All life dying except the one consumated in an animall ecstasy of nerve against nerve, of nerve nourishing

nerve, of nerve ravishing nerve. Till it could no longer be borne and nerve must assuage nerve with its heavy balm, its warming sedative of liquid gratefulness.

She pulled her head ways, breathing heavily, and slowly her breathing returned to normal and her heart stopped pounding against mine. We did not draw apart after it was over. We returned to the close plane of sleep from which we had strayed only a few emotions. Still clasped together, I remember murmuring, "Thank you," close to hear ear, and feeling her head move against my mouth in wordless nod of acknowledgment. Later, perhaps only a moment later, a last fleeting thought that I'd forgotten to use the thing Louis had given me in the afternoon. But the thought held no worry. The brain was back in the head. My happiness was unblemished and complete.

Page 210 "So you're happier here than you would be kissing the breasts of your Lucette? I don't believe you. Your piety is a milk-fed thing. It disgusts me a little."

Page 216 "You won't have any servants?"

"No, there's only Madame Renee, and she's a high-born woman. I can hardly see her stooping down to pull up my underwear pants can you?"

"Not exactly, though I imagine it'd do her old heart more good than harm. You'd probably be hot as a poker."

"Not after that. She's got snow-white hair."

Page 217 He laughs. "She'd be so grateful, and in the dark you'd never know the difference."

I may come back in a week or so and see how you're settled. By then Madame Reneé should be pregnant."

Page 232 sleeping alone on a whore's couch.

Page 239 I hesitate, putting my hand on her arm. "Look, you can trust me," I say slowly. "I know I shouldn't ask, but we're two of a kind, surrounded by uncongenial people. Now that I have my villa, why not come and see me? You could go into Town and let yourself be seen there, then return to my place late at night. We could have a couple of hours sleep together and no one would ever know. I have a good fire, and we could—I mean——"

[fol. 382] Page 288 Reeling with repressed anger I lean against the door. "If it's any of your business," I mutter,

"I'm going to Town and find a good, healthy, simple-minded peasant girl who'll sleep with me and make me forget what's happened. And what we do will seem clean compared to what you and I have just been through."

Page 290 "Silly, it was Madame Marceaux. You've met her, haven't you?"

"I've seen her."

"I'm not too fond of her, but she did bring some amusing news. I'm sure you've heard of Salesky, the taxi driver? Well, there's a girl here, Madame Rouen, who's his mistress. She has a little spice shop."

"I've heard that. What about it?"

"We believe she's pregnant again. Poor thing, I feel half-sorry for her."

"Where's her husband?"

"Oh, he was a prisoner of war for several years, and during that time she bore Salesky two children. Of course when her husband came back and found out about it, he left her."

"Too bad." I light a cigarette and wait for her to go on.

"Well, the girl's been getting large again, but this time she denies she's pregnant. She claims it's a tumor and says she's going to the City to consult a doctor." She leans forward eagerly.

"You won't believe this, but two or three days ago she said she was suffering and sent for Madame Marceaux. When Madame Marceaux got there Madame Rouen was in bed, and on the floor by the bed was a bloodstained cloth. Naturally Madame Marceaux asked about it. The girl explained she was menstruating, and pulled another bloody cloth from under the covers. She apologized to Madame Marceaux for being in such a condition, and begged her to get a young girl who works in the store to carry the rags out and burn them. She also asked for a clean cloth. By doing this, you see, she knew Madame Marceaux would be convinced of her innocence."

"And wasn't she?"

"She was until today. Now this will amuse you. Today an old hag—who's the mother of your domestic, by the way—this old hag was cleaning the store and she found the half-burned carcass of a cat in the stove." Madame Renee laughs piggishly; she seems to think it excessively funny.

I play with a strand of tobacco hanging from my cigarette.

Page 291 "And I suppose you good ladies pumped her for all the gory details."

"Of course not. I knew nothing about it till I saw Madame Marceaux this afternoon. But obviously Madame Rouen's pregnant. She planned it, don't you see? She killed the cat and soaked the rags with blood, then sent for one of our better-class women. She didn't realize how soon she'd be found out. Now it's all over the Village and the poor creature's in more disgrace than ever."

Page 292 "Did you believe him?"

"Of course I believed him. I was from one of the great families, and he was only an artist. I loved to slip away from school to go visit his studio. That's how he took advantage of me. But he did love me. And he was honest enough to divorce his wife and marry me."

Page 304 "For almost two weeks I dress you every morning. Each time you crawl naked out of that bed without a sign of embarrassment in either of us, because it's something that has to be done. And yet this morning when I open the door and glimpse that same Page 304 bare ass, [fol. 383] I instinctively draw back in the hall till you cover yourself. And you feel the same thing, for you tell me to wait while you struggle to hide what I've already seen so many times."

Page 305 "That's right. You and I've both slept with nice women, M'sieu, and seen and felt every part of their bodies. But have you ever tried to pat one of them on the behind the next day? Chances are she slapped you to heaven.

Page 306 Look at M'sieu Gide—our greatest writer, and yet he'd like to see marriage between males made legal as it was in ancient times.

"No!" He grins through a cloud of smoke. "Well, now you can have some freedom. You can even get a nice girl in here to stay with you, eh? Maybe Madame Vincent's beginning to——"

"Not her!" I laugh. "She's like your nice modest lady. We're good enough friends, but that's all."

"Tell me, M'sieu—I'm not trying to get personal—but is the talk I've heard true? Did you really have an affair

with her? Somehow I've never thought of her as being that type."

I smile: it's a question I would resent anywhere but in France.

"The talk's true, all right," I readily admit. "But she's really a fine woman, better than most. And she's making amends, you know. She wouldn't let me touch her now."

Page 308 "I hear she's been giving you a bad time. What's the matter won't she let you have it? Or won't you let her have it? Which? She's a good looker for her age. I could tear up her——"

Page 309 My house is open to the public, but I don't want to come home and find the two of you together upstairs. You know I can't risk such things, much as I'd like to."

"All right, M'sieu," he says resignedly. "But I'll pass you an occasional pack of cigarettes. And say, do you need anything else?"

"Yes, but you ought to see him on a party. Now there's a man without a shred of modesty. There's nothing he won't try to do—and right there in front of you—to please the girl he's got. I think you're crazy not to let him find you a girl like he suggested—but that's your business, of course."

I shake my head. "I'm too tied up with the Monastery. Can't afford to take the chance . . . What's his wife like, by the way?"

"You'd get along fine with her. She's much too good for him and he knows it. He loves her and loves to show her off." He swallows the last of his coffee. "You know, You can't help but like Salesky even though his main reason for living seems to be below his waist."

[fol. 384] Page 318 "Come on, come on, out of bed! I've already lit your fire." Grinning she throws the blankets from my body, bursts into cackling at the sight. "Oops, why the young pup's naked! Ha! Come on, up with you!"—grabbing my ankle, jerking me over, slapping me hard on the behind.

I roar angrily, "Get out of here, old woman!" and try to cover myself, embarrassed and indignant.

She leans back, rocking on her heels with laughter, coarse,

dark, laughing like a man. "What's the matter, hey? Ah, he hides himself, for example. Come by the fire. You got nothing to hide from old Mother Nourrie. I seen men lots bigger'n you, and lots uglier. Why, my Papa Nourrie——" She squints and moves her hands to show me how Papa Nourrie is made.

"All right, all right," I interrupt impatiently, "I didn't ask you for an estimate of my sleeping qualities."

Page 319 "There, young turnip, and here's a chair. How come you sleep by yourself? Why, you're young and full of sap and you're a fine beauty of a thing."

"You're old, Mother Nourrie, anything would look good to you. Now leave me alone."

She grunts and tosses her shawl across my shoulders, a grinning, half-surprised expression on her cramped face.

"The blood runs good in you, sweet child. Ha! it does me good to see you. Stand up. No? In my day a man stood up for me It's good to see youth even when you can't feel it any more."

I tie my shoes. "You're pagan, old Mother."

"What?"

"Nothing. Hand me my underwear, will you?"

She retrieves my underclothes and examines them carefully, shaking her head slowly from side to side.

"What's wrong?"

"Ha! they're filthy."

"Here," I sigh, "I'll get some clean ones just to please your ignoble old heart."

She gazes at me, clasping her hands. Quickly I put on clean underclothes. She steps close to me, her face serious.

"Tell me, fine boy," she says loudly, "you look good and ful and nice-sized, and your whiskers grow healthy and the behind is broad—are you sick?"

"No . . ."

"Then why do you keep a lonely bed? Why waste young muscles this way? It's sad—none of my business—but sad. You ought to be locked to somebody else. Ah, look at you! You got blood and your skin's rich and rosy. You'd be better letting another's hands know you."

"If you don't stop talking, miserable woman!" I tell her—but now I am laughing.

Standing back, she applauds. "Aha! the young garden begins to grow and bud and blossom. Good! Go, young beauty, the country's full of girls who smell of fresh straw. In winter they're green and warm like young plants. Leave this old hag and find them. Break their backs and fill them with children."

Page 322 "Good-bye, Mother Nourrie, I'm going to the Monastery." She grins. "Bye-bye, sweetness, bye-bye, young fatness, bye-bye, nice thing, bye-bye Pinkness, bye-bye, prettiness, bye-bye, fresh garden, bye-bye——"

"Oh shut up, won't you?—laughing.

[fol. 385] Page 323 She stands solid, hands on hips, glaring. "You tell me to shut up! Wasn't even talking to you."

"No? Then who were you talking to?"

"I was talking to your you-know-what, young boy. I was telling it bye-bye, sweetness, bye-bye, nice thing, bye-bye, prettiness——"

Page 326 "That bitch!" exclaims Madame Chevissier spontaneously. "That dirty bitch!"

Page 365 We sit alone in the car, very close, and our hands find themselves. There's little time. Placing her hand in my lap I lean against her, and murmur in her ear, I need you, Marguerite. Won't you help me?"

She doesn't move her hand away. "But we have not time, no place."

"Here and now—I know you want it."

"I'm really a low woman at heart."

Page 366 "Good! And we'll dedicate it to Madame Renee. May she inspire us to heights!"

Marguerite giggles as fondlings become excitement and spite.

"So," I whisper, "You think I'm just like her jean-Julien, eh? I'll fix you for that, my precious."

Salesky opens the front door noisily. We sit upright in the back seat, laughing.

"My friend," I tell him gaily, "drive around slowly for half an hour, will you?—and don't look back."

"Aha, M'sieu, as you say." The lecherous smirk on his face shines in the dark.

Wheels crunch slowly through the ice-crusted snow. Salesky whistles to himself. Headlights reflect upward from

the rough white ground, upward into the frosty air of night. Lights from the Village fade as we drive into the country and other things more immediate occupy my consciousness: things immediate and warm—for Marguerite is crazed with the need—yet somehow detached. Inner clutchings and desires suddenly become superficial enjoyment of the moment. She bares her breasts. We each become sensations, but my mind can't descend the long curve; it stays in the head. It patiently notices the feel of leather-and-felt upholstery, it hears the tune Salesky whistles softly to himself, it waits half-laughing—and it's pleasant waiting. It's detached. It sees snow from the corner of its eye and feels her hair beneath its cheek and breathes her breath—but it's not there. It waits, calm in frenzy, almost derisive with the growing of pleasure. It thinks of Madame Renee and grows derisive. It thinks of other waiting faces, dumb faces of people standing in line at the bread shop, each waiting his turn to exchange ration tickets for bread. It's that kind of waiting, waiting on floatings and coarse facial pores and liquidness beneath the mouth. Warmth without heat, heat without burning. Calculated waiting in line with a dumb face and and an occasional sigh and a cringing from frenzy. The brain refuses to leave the head. Hands draw the bundle closer beneath and, instead of the flesh, feel the roughness of car seat against wrists. Time passes with thought suspended as we take one step, and then another, nearer the end of the line. And there's finally the ultimate in warmth of breathing against cheek, in sounds of lips and wetness on face, and it's a moment not of concentration but of many things. It's the dumb face's turn now, the exchange of its ration tickets. Leather upholstery squeaking and shoes scraping against the rubber floor-mat and Salesky whistling louder for a moment above the rasping rattles of passion. [fol. 386] Page 367 The pressure of drawing closer than close as a reflex, and the waiting to leave. We settle quietly till the gesture of straightening wrinkled clothing gives me permission to go, to move away with a final pat of basic politeness. The arranging of things. The brain settling comfortably and looking out the window, and the one helping the other with hands pulling on clothes and fastening buttons and absent-mindedly dusting wrinkles. The wheels

of the car in the snow, and darkness beyond the clear cone of strong headlights. Salesky coughs. I cough in answer and he turns to stare.

"All right, M'sieu?" His voice is saccharine with mocking respect.

"Yes. Take us to the station now."

Page 382 Other things become clear. Only now do I understand why Dr. Castelar wished to take me to the worst whore he could find, for I should like to do the same thing with this Michel—to kill the rottenness of his goodness with the health, the humiliation of disgust. But he'd probably try to convert the whore.

Page 399 Again it's daylight, and I am plagued with hunger as wakefulness returns. Voices, instantly recognizable as the circle of old ladies.

"Ah, he's awake. And how does M'sieu feel now?" asks the nameless woman who buttoned me.

"I'm fine," I reply, "thanks to the wonderful care of you good ladies." I glance about the room. "Where is the Sister, the nun?"

"But, child," Mother Nourrie says, as she approaches my Bed. "you were so mean to her, she left. And right, too. She had no business here. I told her old Mother Nourrie was more used to you." She chuckles. "You spoke some fine French-good outhouse French. This was no place fore her."

"But what day is this?" I ask, worried. "And how was I mean to her? What did I say?"

"Damn! This is Wednesday. child. You've been gone to God for four days. As for that slit-tailed monk, you were rich. Such a tongue! Ha, and you tried to comb her hair."

The old ladies laugh thoughtfully.

"Zut!" Mother Nourrie goes on. "Don't feel bad. Slit-tails shouldn't be running around loose like that."

"I tried to comb her hair? I inquire frowning.

They become hysterical with laughter. Mother Nourrie's eyes stare at her nose as she slaps herself on the leg. "Sure. you don't know what that means, poor thing. I guess they've got it the same as you and me. You tried to get under her robe." I listen horrified. "What?"

"That's right, you tried to get under her robe." The old

women, led by Mother Nourrie, laugh harder than ever. I look around at them.

Page 412 Snorting, smirking, she asks, "Incidentally, were there any pretty nurses in the hospital?"

"All of them were beautiful," I tell her seriously, "And I violated each one of them twice. Does that satisfy your curiosity?"

[fol. 387] Page 441 "Why, a doctor friend of mine even suggested that if there's any further delay, we go ahead and have physical contact before marriage. What do you think?"

Page 442 And tell me, do you think maybe I should try to keep her satisfied in the meantime? I've never had any sexual experience, I'm just asking you."

Page 466 The delight of Mademoiselle Marthe's talk fills me with a newness of sensation: delight in thinking of someone fresh and young, and of a house and a bed and a permanency of clear marriage. Tremblings of excitement, and the sudden rush of a turbulent past: turbulent past when a woman meant nothing more than a quick cleverness of speech and the arousal of verbal advances, with a triumph consummated only in the sex act

Page 474 "Is everything all right now?" she whispers intimately. "Did you have enough supper?"

I stare at her and remember almost the same words spoken in the same voice, with the same intonation and the same whisper, when a whore once asked me, "Was that all right?" They are the same, these voices and these words, repeated under not-so-different circumstances; and there's the same questioning on the face, knowing that I'll answer yes as the whore knew that I'd answer yes. The parallel is too complete. Instinctively I pull away from her, preferring the whore.

Page 478 She whispers, "I prayed for you this morning, my poor friend. I—I simply don't know. O God, I hope she's not really-pregnant." The word shimmers like a sudden chill through my body: Pregnant. Pregnant. Pregnant.

"She's little more than a whore, that one," says Madame Reneé with sudden anger. "Just like her to refuse an operation. Well, I'll help you. I can think of something to drive her away."

"No, no!" and my voice is chokingly dry in my throat. "It can't be. She's a fine woman. It just can't be."

"I hope not," she says distractedly. "But why else would she come back here? We must find out."

"I can't believe it's that. Madame Vincent wouldn't have come back if it were. She'd have written."

"You're so foolish!" Madame Renee says intensely. "She's a whore, I tell you. She's responsible. I hope this teaches you a lesson."

Page 479 My head turns and I fall into a chair. I feel a moment's exultation that my flesh is in the flesh of another's belly—but it's drowned in her age and in threatened disgrace.

Page 480 Two young men, comrades, sit down at the next table. They order beer and talk—decent, sincere talk about the lamentable lack of girls in the Town. They are home for a vacation between semesters at school. I listen to them. They worry. They confide in each other as do two people with the same disease—the need of a girl to sleep with. One of them concludes by leaning back in his chair, and smiling sadly, and saying that he really doesn't know what he'll do if something doesn't turn up soon.

[fol. 388] Page 482 "She's a fine woman, you know. I hope the bitches will leave her in peace this time."

Page 485 Pursing her lips she makes another laughing sound. Intimate, secret. Bends down to look at me more closely, casually putting a heavy hand on my stomach. "Now I know you're drunk, my friend, she chides. "But don't worry, no one else will ever know." Her hands pats my stomach, feels its outline like you feel a tomato to see if it's ripe. Pressing, releasing, heavy. Going lower. "Sure I can't get you anything?"

"Nothing," I tell her. Hand on my belly. Hand feeling. Grinning hand and headache lost in pulsing.

Her face bends closer to mine, next to mine. I can smell her breathing and feel it. Skin, pores of skin. And thin gray hair floating in the air near my eye, catching highlights from the lamp. Her face shades mine. Warmth from her. My eyes lower, see the creases of her nose, fine particles of face powder. Hand on my belly and belly moving beneath her answering caress. She makes an intimate sound-small

gust of warm air on my cheek. A hair, one fine thin gray hair floating there near my eye. Body in white dress somewhere there above me, near me, And legs, mortal thighs, wide thighs hidden but there somewhere. Face nearer mine. Belly moving under her grasping hand. Heavy hand. My arms go up clumsy, pulling at her body there somewhere, feeling for it. Without opening, lips move against face pores. Spot on the ceiling above her. Eyes turn back to floating hair caught in lamplight. Hands feeling backs of legs. Feeling detached deepness of skin and fats that move. Fingers sinking in, moving up. Two frozen bodies together, waiting for hands to move up to thighs and hips. Hands moving, eyes closed. Softness of flesh changes to rough hard corset staves under white dress. Two frozen bodies. Hesitation of feeling. Again the fumblings. Hinted cringing as mouth opens to taste face, and softness of lips finds fine wrinkles of cheek. Hinted cringing as momentum builds. Her hands moving down on my belly and my hands moving up to feel hardness of covered breasts. Momentum, and her hands touch lowest belly beneath covers. Touch, feel a moment——and it flashes. Light flashes in my eyes as her hands are jerked away, as fine floating hair disappears. As body in white dress becomes motion of brutal tearing-away, as heavy hand slaps hard against my face, and slaps again. Turning of face with the slap. Confusion of spot on the ceiling now that her face is gone. Confused blinking to see the room clearly. She stands there high. Red swollen face. Accusing immobility. I rub my cheek and mouth where the hand struck. And I look at her there. I think of the stiff corset, the hard-packed breasts. I look at her outrage and laugh, and laughter grows uncontrollable. She turns to go, her fine gray hair being arranged with heavy, trembling hands back into a knot of convention atop her head.

Page 487 My voice brakes her step to a moment's pause. "So you're like that?" it taunts. "Lead a man on—"

Madame Renee's slap has disorganized my nerves, and her old woman's caress of my belly has filled me with loathing—and with a desire to consummate my excitement in a young girl. Thoughts of Christianne, of the way she moves, of how she would be. I walk about my room. Thought be-

come obsession, thoughts of all the women who have insinuated themselves into my life here—Madame Renee, Madame Vincent, Mademoiselle Marthe—and the dreams of Christianne which fight the dreams of an obscurely lighted [fol. 389] Page 487 chapel and of an unknown girl whom I could know in marriage.

Page 489 The old woman leans her driveling wine-red lips near my ear. "And she's a fiery little bitch. From my side of the family. We got good blood on my side of the family. You look pale tonight—why don't you dance with her? She'll make your stove warm proper." She leans back cackling, nudging me in the ribs. I say nothing, and she cups her hands around her mouth and shouts, "Hey, Christianne! Come over here!"

Page 490 We dance farther off into the dark. And we move together, fitting close at belly and thigh-straining, torturing animal movements. The saxophone rises in a crescendo that echoes through the dark narrow tunnel of the street. I bend my face down and my lips become wet against her shoulder. She throws back her head, laughing, and we stop dancing. She is full of devil odors and laughter and it's an easy thing. Her hair falls to the back, away from her face. My lips kiss her under the chin and down the long throat, feeling the smoothness of young flesh. They kiss still lower, into the cut of her dress between her breasts, feeling the crease of her large breasts. Smells from under the dress: smells of sweat and lively odors of exercise. Smells of rutting youngness—rich, animal, intoxicating—tearing me with tremblings. I fondle and fumble and kiss, inhaling risings from her dress. She reaches down, laughing, puts her hand under my chin and lifts my face to hers.

We begin dancing again. Slowness of dance, violent shaking and violent music. Other odors return, odors of the beginnings of greenery from the pastures about us—waking smells of dampness in the warming earth. We dance a torment of closeness, pressed against a flimsiness of clothing. The sky hangs low, forbidding, and she heats in my arms. She smiles, looking up into my drawn face, and her smile is smells, too—smells of garlic and wine and food digesting below, of white teeth and wetness of inner mouth. I bend down, inhaling these odors, and all about is the burgeoning

heaviness of first greens, of earth coming alive after its long sleep. Damp night-odors of earth's rumblings. Thigh straining against thigh. We dance with both arms clasped about each other, arms going lower and lower, pressing lower parts together. The music stops again. Laughing shouts float down the street to us. We don't even think of going back. We continue dancing. And in the dancing, lips find lips, open mouth finds open mouth and inside of mouth, as mouth shakes against mouth laughing and caressing till it engulfs us with its eye-closed dizziness and nose feels warm exhalation from the nose beneath. We stand still. Lips grow rigid. Laughing stops as the hardness of our kiss creates a vacuum of the senses.

A first drop of rain, followed by other scattered drops. A shout of despair from the other dancers. We separate lips and tongues with a noisy wetness. I walk her into the nearest doorway. The rain is light. We stand side by side without speaking until she mutters, "It's blowing on my—I'm getting wet."

"So am I," I laugh. "Here, let me stand in front of you." Rain falls lightly, wetting the cobblestones. It's a fine mist fogging the streets, catching the reds and greens and oranges of the dance lights. I stand in front of her, against her, protecting her from the rain. Our arms are around each other, and her face is cool with the mist. Noises of [fol. 390] water dripping from the Page 491 *from the* eaves about us, and sounds of the River, fill a music-emptied Valley with a flood of moving sound. I stand close to her, clasping her, bending to kiss her eyes, and the rain blows on my back, on my neck and ears. It drips from the roof above, dripping onto my back, wetting my coat and pants. I ignore the coldness of the rain and lean hard against her, pressing her to the locked door behind which someone sleeps never suspecting. Time and rain and wetness fade. Lips drink of lips. My hands find buttons and undo them, feeling inside. My hands fondle her lightly, a caress to the nakedness of her back and belly and breasts. She trembles violently as blood pounds into the kiss of our joined mouths, as intimacy becomes complete and movements attune themselves to the night and the deserted wet street. I reach up to remove the dress from her shoulders, but her hand against my hand forbids, asks mine to wait.

"Here comes a car," she whispers against my ear. "Don't let them see me."

I stand against her to hide her from the street. The car moves past in a humming of tires on wet pavement, and pulls to a stop. Christianne trembles from the interruption, and rain falls more rapidly. I feel my way into her dress again, Page 492 but she peers out and whispers, "Why, it's stopped at your house." "It has?" I turn and look. The taillights glisten redly through the falling rain. And coming from the dark, illuminated in the glare of the headlights, a woman walks rapidly—a glimpse is all, as she gets into the car.

Christianne stares and mutters, "Why, isn't that your lady from Paris?"

"Yes. This may be important. Wait for me here, won't you? I must see her."

"Ah, no—you leave me for her!"

"No, no," I tell her, kissing her hurriedly, "I leave you for no one. But I must see her."

The exhaust from the car smokes its acceleration and I leave Christianne unbuttoned, dashing and sliding over the slippery walk, calling for the car to wait.

Page 493 "Where'd you go, child? Wouldn't my Christianne be nice to you? I'll tell her a thing or two!" She stand close to me, her face serious, concerned.

"It was my fault, old Mother, not hers. She was fine. Where is she now?

"Just danced off down the street with young Edouard, the sculptor's son. Did she leave you? I'll go get the young slut." "No, let her go, I'm too tired. But will she be all right, do you think? Will he finish what I started?"

The old hag stares at me, shaking her head. "You look bad, M'sieu. Couldn't you make it go? Should be plenty able from what I've seen. I'm surprised, but I know how it won't go sometimes when you want it to. Try eating boiled celery, they say that helps."

I pat her arm. "It's nothing like that, old Mother. We were interrupted. Something has happened. It's nothing like that." "Damn! I'm glad to know it. Don't you want me to go for her?"

[fol. 391] Page 511 She stares up at me. "Why didn't

you tell me you were at the dance last night? Madame Marceaux said you danced with Christianne with a servant girl!"

I laugh. "Madame Marceaux's a bitter old woman: she needs to be violated by an enormous man. Sure, I danced with Christianne. It was a public dance. And if you want to know the rest, Mother Confessor, I played with her too."

"Oh, no," she moans.

"Don't act so surprised. Both you and Madame Marceaux think it went further than that—and it would have, only we were interrupted. It rained on us."

"Ha, that's good. So your world can be ruined by the indiscretion of the buttons on my pants.

Page 514 "Drunk enough," he grins, "to . . . uh . . . go after Christianne, from what I hear."

"You don't have to be drunk," I mutter, "to do that. Been wanting her a long time."

He squints at me through the smoke of his cigarette, and asks seriously, "How was she, M'sieu? I've always wondered about that one."

"Lord!" I groan, shaking my head appreciatively. "A little animal. I nearly went crazy."

"That good, eh?"

"You can't imagine——she's made for it."

His usual cynical grin is replaced, momentarily, by an expression of benevolent warmth. "I'm glad. Now you'll have her regularly."

"I doubt it. You knew I didn't finish. I only paved the way for Edouard."

"No!" He stares at me. I knew she was with Edouard too, but I just supposed—"

"I was called away before finishing the job. When I went back she was off in the dark somewhere with him."

"Anyone who'd just walk off and leave something like that . . ." He shakes his head unbelievingly.

"You're right. But I was worried sick about Madame Vincent that night. I was afraid she was pregnant, you know—but I found out she's not."

"Well, I'm glad to hear that, M'sieu. Glad for you," he adds absently, still shaking his head. "You just walked away from Christianne? Left her there?"

"Unbuttoned," I say gravely. I hand him my cigarette to put out.

"You think my fooling around with her did me much harm with the gossips?"

"No," he snorts, "probably helped. From what I hear, some of them were beginning to wonder if M'sieu weren't maybe hung like a dove."

"If I wasn't what? You mean . . . Why, they should've known from Madame Vincent it wasn't that."

"Still, it's hard to say. They don't think it's natural for a young man to live like this—in a cage. So to speak, cooped up with an old woman. Has she got to you yet?—not that it's any of my business."

"Not yet, but she—" I hesitate, then decide to say nothing more.

Page 518 "No damn it," I admit. "Michel wrote me too. All right, so he's an idiot and so he's getting married. Good riddance!"

She lifts her eyes to the ceiling. "O God! God damn him! God damn his soul for doing this to me! I'll stop it! He can't do it."

[fol. 392] Page 519 "God deliver me! I laugh brutally. "Virginity in a woman is a messy business. Be thankful someone else has already bled her."

Page 529 I crumple the paper and throw it in the direction of the stove. The bitch! The damned peeping bitch! But—perhaps I'm wrong.

Page 530 Perhaps I kicked the covers off. The room was warm when I woke up. I could have kicked them off.

I think of the prayers I muttered yesterday. They're destroyed today—destroyed as though they'd never been—by the memory of an old woman cradling my feet in her belly, perhaps pulling back covers to gaze at my sleeping nakedness . . .

Page 533 "Nothing. You know I'm happy to have your company, but I've got to keep my privacy. You understand. What if somebody had walked in here this morning and found us together—with me naked? . . ."

"What?" she asks expressionlessly.

"Well, how would it look? What would you think if—?"

"Why, you nasty-mouthed—" Her voice is loud and thick.

"It's the truth, isn't it?" I blurt out. "At least I don't go around peeking at naked old women. I don't—"

A hopeless broken laugh interrupts me. She raises her head, her eyes question insultingly. "You don't?"

"Hell, no!"

"Of course not," she says sweetly, "you're an angel. You prefer tickling their stomachs with your toes, don't you?"

"Well, I'll be damned!" I clamp my teeth together, thoughts tumbling in confusion. I stare at her. "I think you owe me an apology, Madame. I can't—Ah, the hell with it." I let the words die in a tired, dull voice.

She snorts, "I don't apologize to kids," looking away, shrugging her shoulders.

Page 534 She smiles again, uncertainly, and draws back a step. Angrily I reach for the doorknob to shut her out, but she won't move and the door strikes her left shoulder. As I walk away she steps back into the room; she is holding a handful of her left breast, the breast large and cupped in her hand as a lover might hold it. "You closed the door on my breast," she whines. "You hurt my breast."

The sight of her standing there, grimacing from the imagined pain in her breast, pressing it, squeezing it, pulling down her bodice as though to show me, is more than I can bear. I burst into laughter. "Ah, what a brute I am!" (The insult causes her face to glow with sudden dignity.) "The door didn't touch your breast and you know it. Now, if you want to expose yourself, do it—but for God's sake stop playing with that thing and leave me alone."

Page 538 Her craving for intimacy. The touches. Her breast. Thoughts wander into speculation. I place a bare patch of flesh at her disposal and it buys—what? Michel's happiness? I become a whore, then. No, it's not possible . . . but yet, curiously, it's like the whore's "Psst:"

She bites her lip pensively, reddening, and closing her eyes she nods that it is—"A little." Her hand begins fondling the breast again, as pleasure bloats her face.

"Hell!" escapes me and I turn away from the sight of

her, sick. Catching myself, I'm about to apologize when she lifts herself out of her chair and comes quickly to my side.

"No," she soothes, "you mustn't blame yourself so." Her hand is heavy on my shoulder. "If I'd known you were going to be so upset about it I'd never have mentioned it." She gives me a gentle little shove and laughs warmly. Reaching down. she takes

[fol. 393] Page 538 *"No," she soothes, "you mustn't blame yourself so." Her hand is heavy on my shoulder. "If I'd known you were going to be so upset about it I'd never have mentioned it." She gives me a gentle little shove and laughs warmly. Reaching down, she takes* Page 539 my hand in hers. "Isn't there a little knot—there?"

A shudder of repulsion as she guides my hand into probing softness. "Believe there is," I mumble, struggling against the desire to tear my hand away.

"Listen, stop worrying," she murmurs close to my ear. "It's probably nothing serious."

Her stomach beside me. I'm aware of it as something naked and cavernous. Sensations of a whore. A coin for a caress, submitting to the caress, killing the desire to draw away until the desire flames out and there's only the belly dragging against you. A cheap coin—the price of legitimizing Michel's venereal fevers—cheap. It buys my whorish slaverings and come-ons, my harlot sincerity and warmth.

"Don't feel so bad about it," she goes on, her face brushing against me. "It doesn't hurt so much now."

I submit, not moving, closing my eyes and seeing her, seeing her swollen into a gigantic serpentine voluptuousness. A vision of strong legs, deep navels, bursting milk-white breasts-insatiable, grasping, choking triangles of pubick grayness before my eyes. Begging to be possessed, wavering slow undulation deep within me, suffocating me. Lost. Irritation of being lost. Touching the table hardness with my hands, fighting the vision. Concentrating against it and carrying it forward, letting it escape into the fog of dreams and desires. Hunger mixing with the deep-etched circular lines inside a woman's navel. I am walking slowly in the navel, on the tiny trails that spiral inside the canyon, looking up, sight-seeing, walking and looking about. Hunger for the taste of maggot-ridden carrion. Veiled redness, glistening. Tremulous building into—

Page 564 "I'm sorry," she says in a cracked voice. "I know you. You've needed me and I've failed you. That's what makes you so nervous." Her hand touches the back of my neck, fondles around to my cheek. "Remember the night you got drunk? You wanted me then." A sob breaks her voice. "If—if you'd just be nice to me . . ."

I feel her breath against my face. I sit stunned as her cheek brushes against mine. Unconsciously I arch my head away, but the tingling juncture creates in me a suppressed excitement as hinted animal tangents coverge into focused desire. The body knows the possibilities and begins to savor them far in advance of consent. I sit motionless, remembering feelings—the catching of the breath, the flooding of warmth when a whore hisses, when a street girl glances, when body becomes aware of body and stirs its own compulsions. No. I recoiled, but muscles and nerves become hypnonotized. A faint odor of face powder, musky, stirs my intestines with simultaneous loathing and desire. The aunting possibility—the offer of her body to my body, of her nerves to my nerves in brute slakings of universe pleasure —is irresistibly compelling. I feel her hand prowling across my chest, warm and full. A suffocated exhalation rasps loudly from her as her fingers grasp hungrily at my chest [fol. 394] and, with a circular motion, caress a wide — Page 564 All feeling, all emotions center in the soft warmth possibilities contained in her body beside me in suspense while her strong fingers unbuckle my belt and crawl stealthily searching . . . until clothing is no longer a wall and flesh touches living flesh to stimulate engulfing desire. A battery of sensuality is exploded into my belly. Her lips against my face. Through slitted Page 565 eyes I look downward. The black wool sleeve, disappearing beneath cloth, weaves gently. I hold my breath painfully. For a drunken moment my sight is caught by the glistening stain of coagulated sugar where the preserves were dropped on her sleeve. Her lips trail a pattern of sensation across my cheek and I turn to meet them closing my eyes. A whimpering sob escapes her as our mouths join and move liquidly, hungrily against each other. Shock as her mouth exudes its warmth onto mine. I struggle to my feet, my legs shaking so that I can scarcely support my weight. I gasp as she withdraws her

hand. Her arms shake their way beneath my armpits. We stand pressed together, hands and mouths and groins searching living tumescence.

But passion falters with a caught breath. A thought bolts through my consciousness—a faint protesting plea that warns me of the moment, begs me to break away. Formless plea, vague and meaningless. She rubs against me. She is like a bitch in heat dragging me into her, and tensions build hopelessly against the plea. The plea is a fleck, an irritation flecking mucous union, as groins and bellies become united in overwhelming thirst. Her arms tentaclelike, tighten around me and we float in feverishly embrace as the plea sends words tracing themselves in dreamy sequence, like a curl of smoke, through a faraway consciousness. Mary conceived without . . . I lean back against the table, rejecting the flecked words, and pull her full against me, my hands beneath her buttocks grasping the whale softness. . . . sin, pray for . . . Vision alternates with blindness. Suddenly I see a throbbing heartbeat in the hollow of her scarlet throat, then blackness as hands seek intimacy and lips suck lips in hyena laughter. She arches forward, maneuvering until her legs frame my thighs . . . pray for us who have . . . The grit, the irritating grit of pleas, like sand against tender inner flesh. The plea begging me, pumping words against the diaphragm of my craving. Now or never, now or never. Destruction. I feel her hands grasp my head and lower it inexorably to her throat. I taste the flesh and feel her swallowing muscles beneath my lips. Mary, conceived without sin, pray . . . Her belly twists with pleasure in a gigantic ser- Page 566 pentine voluptuousness tossing me into a full dream of carnality. But somewhere in the back of my mind, clogged with screaming desire for her, the resisting plea flickers, hesitates, blinks out, pulsates to the fore as bloods pound out visions of strong legs, of distorted buttocks, of insatiable, slavering vagina. Lost. I lift her higher over me as her hands force my head downward into the opening of her dress. The hard edge of the table bites into my haunches. . . . without sin . . . The two images —nakedness full of rich odors struggling against the dim image of words, blotted and blinded. All things—the past, the hopes—combine into ambivalence attracting, opposing,

striving as all futures and all times become the moment. My hand finds her most intimate warmth and burns with pleasure. The will like an inflexible pole, the will tall and [fol. 395] phallic—and something beyond Page 566 me seeking to bend the will, to change its course for the first time, for the very first time in my life. Mary . . . inner sobbing . . . conceived without sin . . . forcing the words against all desire . . . pray for us who have recourse to thee. Bending the will, distorting the will—until the rack becomes insane and the soul bursts into weeping. Words die in suffocation as a slow undulation knots the entrails with her bitch cravings. I feel her knuckles hard against my chin as she opens her dress. With the other hand she pushes my mouth against the upward slant of her exposed breast, my lips clutching. Concentrating, concentrating, not letting it die . . . without sin, pray for us . . .like the faded print of an old newspaper, yellowed, mixed with the reek of my saliva on her breast as my mouth is guided hopelessly toward the goal, the detested goal, the nipple. Muscles in my neck resist. The dread of arriving at the prune nipple. Aged flesh, used, but fresh eternally in Great exhaustion from struggling against the faded print that now dominates my inner vision. Shaking my head against the lustful snare. Eyes glimpse blue veins beneath transparent white skin, saliva-streaked, saliva-stenched. Mary . . . pleading, begging as the nippled goal draws Page 567 near Mary . . . and the hard warm shriveled bulb against the corner of my mouth. Fighting back the choking rise of vomit, as muscles tense rigid and all concentration divides between the dreaded goal and the words pulsating clearer. Mary, conceived without sin . . . And the faded print is suffused slowly with luminous black, and the old newspaper, yellowed, becomes atmosphere shimmering behind words, destroying the other image as I feel the nipple bending to enter my mouth and my mouth rejecting it in a convulsive wrenching as the screeching howling rasping whiteness slithers away to sudden nothingness. I shove her away and stare open-eyed. The room swims wildly. I see her congested face, the exposed breast glistening. Without opening her eyes she flows toward me, arms outstretched. Slowly, dazedly, I lift my arm high in the air and bring my fist smashing down into

her face, She crumples to the floor. Dimly I see tiles coming up to meet me as blood-mists float across my eyes. I catch myself against the table, weaving, trying to focus on the whispered Mary, conceived without sin, pray for us . . . And far in the distance, out of space, confusions and sicknesses gyrate around the one exultant nucleus; For the first time. For the very first time.

Madame Renee, wallowing on the floor, is wrenched with sobs. Slowly, I lower trembling hands to my belt, and stuffing in my shirt tail I buckle my pants. Reeling senses seek their level in the tear-mulched silence. In my legs there's no strength left to support me. I lower myself in the chair and let my head fall forward on the table, inundated with gratitude for the insistent phrase For the very first time—abandoning myself to it—For the very first time. I am filled with the gentle, floating pain of unbearable relief.

A scuffing sound attracts my attention. I open my eyes and look downward. The table angle gives a triangular view of the floor. Absently I watch, seeing only her sturdy black shoes and the hem of her dress as she gets to her feet. I watch the shoes turn sideways, hesitate, then disappear beyond my range of vision.

[fol. 396] CERTIFICATE OF TRIAL JUDGE TO STATEMENT OF FACTS

I, the undersigned, one of the Judges of the Recorder's Court in and for the City of Detroit, County of Wayne and State of Michigan, before whom the above entitled cause was tried, do hereby certify that after due notice I have settled the foregoing as a concise statement of proceedings and facts in support of an application for leave to appeal in said cause. And I further certify that said statement of proceedings and facts fairly presents the questions for review in said cause.

/s/ *John A. Ricca*, Judge of the Recorder's Court in and for the City of Detroit

[fol. 397] IN THE SUPREME COURT OF MICHIGAN

[Title omitted]

PEOPLE'S MEMORANDUUM CONSENTING TO GRANTING OF APPLICATION FOR LEAVE TO APPEAL—MAY 19, 1955

The People agree that because the issues involved in this case are of great public interest, and because it appears that further clarification of the language of Section 750.343 C.L. 1948, as amended by P.A. 1953 is necessary, application for leave to appeal should be granted.

Respectfully submitted,

Gerald K. O'Brien
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Dated at Detroit, Michigan

May 19, 1955

[fols. 398-399] *Proof of Service*

[Omitted in printing]

[fol. 400] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL—June 14, 1955

In this cause an application is filed by defendant for leave to appeal from an order of the Recorder's Court of the City of Detroit and a consent thereto having been filed by plain-

tiff and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby DENIED.

[fol. 401] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—February 27, 1956

Appeal from the Recorder's Court of the City of Detroit of the State of Michigan.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 27, 1956.

(8182-8)

No. 548 16

NOV 30 1955

HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

ALFRED E. BUTLER,

Appellant,

—against—

STATE OF MICHIGAN,

Appellee.

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

ALFRED E. BUTLER,
Appellant,

—against—

STATE OF MICHIGAN,
Appellee.

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Recorder's Court of the City of Detroit, State of Michigan, entered on the 13th day of July, 1954, convicting him of violating Section 28.575, Michigan Statutes Annotated (Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953). Appellant's application for leave to appeal to the Supreme Court of the State of Michigan was denied on July 14, 1955. Appellant now submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinion Below

The opinion of the trial judge of the Recorder's Court was unreported and was delivered orally at the conclusion of the proceedings. A copy of the stenographic transcript of this opinion is attached hereto as Appendix A.

Jurisdiction

Appellant was convicted of violating a Michigan statute making it a crime to sell, offer or possess for sale a book *containing* obscene, immoral, lewd or lascivious language or descriptions tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth. He was sentenced to pay a fine of $100.00. In a motion to dismiss made at the outset of the trial and repeated throughout the litigation, the appellant contended that the Michigan statute, upon which the prosecution was based, was an infringement of the appellant's rights guaranteed him by the First and Fourteenth Amendments of the Constitution of the United States in that it deprived him of his freedom of press and of due process of law.

These motions were all denied by the trial judge, and thereafter the appellant filed a timely application to the Supreme Court of the State of Michigan for leave to appeal, contending that the said Michigan statute, on its face and as applied, and the judgment of the Recorder's Court predicated thereon, violated the appellant's rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. Although appellant's application for such leave to appeal was consented to by the People of the State of Michigan on the ground that "the issues involved in this case are of great public interest", and further, that a "clarification of the language of" the statute was "necessary", the Michigan Supreme Court entered an order on July 14, 1955, denying the appellant's application for leave to appeal. Notice of appeal to the Supreme Court of the United States was filed in the Recorder's Court of the City of Detroit on September 2, 1955.

The jurisdiction of the Supreme Court to review this judgment by direct appeal is conferred by Title 28, U. S. Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Winters* v. *New York* (1947), 333 U. S. 507; *Burstyn* v. *Wilson* (1952) 343 U. S. 495.

Questions Presented

The following questions are presented by this appeal. Does the said Michigan statute, on its face and as applied, which provides that:

> "Any person who shall import, print, publish, sell, possess with the intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious language, or obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

violate the appellant's rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States in that:

(a) its provisions blanketly prohibit and punish the publication and distribution of any book to any member of the public because of the effect such book might tend to have merely on minors, thereby unduly limiting and restricting the appellant's constitutional rights of freedom of press, there being neither charge nor proof that the book in question was sold to or possessed by a minor;

(b) it is so vague and indefinite as not to comport with due process because its provisions prohibit and punish the publication and distribution of a book if such book contains matter which tends to incite minors to wrongful conduct and corrupt their morals—a wholly vague criminal proscription, predicated upon unascertainable and indefinite standards of conduct;

(c) its provisions prohibit and punish the publication and distribution of a book merely *containing* certain proscribed language and descriptions, thus precluding any consideration of the entire book as a whole and thereby imposing and enforcing unconstitutionally restrictive limitations on the appellant's freedom of press?

Statement

The Federal constitutional questions here sought to be reviewed were initially raised by a motion to dismiss submitted to the trial court at the outset of the trial, a copy of which is attached hereto as Appendix B. The same contentions were incorporated in appellant's unsuccessful application for leave to appeal to the Supreme Court of the State of Michigan. Thus, this appeal involves a state court decision which sustained the validity of a state statute against the appellant's objections based on Federal constitutional grounds.

The prosecution itself centered about the sale by the appellant, Butler, of a book, "The Devil Rides Outside",

written by John H. Griffin and published by Pocket Books, Inc., of 630 Fifth Avenue, New York City. This was a paper bound edition of a book which had been purchased in its original hard cover publication by the Detroit Public Library and was on the shelves of such institution at the time of the trial. The appellant conceded that he had sold the book in question but claimed that the state statute infringed his constitutional rights. He contended that the book, viewed as a whole, was not obscene, lewd, immoral or lascivious, but was a serious work of artistic merit and literary value. At the trial, the appellant called two eminent literary experts, Professor Sculley Bradley of the University of Pennsylvania and Professor Frank L. Huntley of the University of Michigan, who testified in support of the appellant's contentions. In rebuttal, the People called representatives of various religious groups and also Professor Charles C. Hollis of the University of Detroit. All of the People's rebuttal witnesses virtually conceded that the book had literary value but in appraising the prosecutor's specially selected excerpts from the work, containing realistic descriptions, and some intimate sex details, claimed that such items diminished the book's literary value.

Thus, the trial accentuated the importance of one of the appellant's constitutional objections. Over objection and exception by the appellant, the People's literary expert witnesses were, under the wording of the statute, allowed or directed to pass judgment on isolated excerpts of the book, taken from their context and treated without regard to the work as a whole or its dominant themes. The trial court's justification for this testimony was the fact that the statute prohibited the sale or distribution of a book *"containing"* obscene, immoral, lewd or lascivious language or descriptions.

Moreover, the trial also highlighted another constitutional objection of the appellant in that it elicited testimony, again over the objection and exception of the appellant, that such excerpts might tend to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth. Here again, the Court was acting under the wording of the statute. This procedure inevitably placed the appellant on trial on a criminal charge that was patently vague and indefinite since there were no standards of conduct, either in the statute or placed in evidence by the People, which could adequately define what incited minors to violent or depraved or immoral acts or manifestly tended to the corruption of their morals.

In his oral opinion, the trial judge flatly rejected all the constitutional objections raised by the appellant and found squarely that the statute was not in violation of the First and Fourteenth Amendments of the Constitution of the United States, and that "the language contained in the book is obscene, immoral and lewd and lascivious and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth". Although the Court conceded "the sincerity of purpose of the author in writing the book" and the author's "beautiful command of the English language", it pointed out that this story of human conflicts could have been portrayed to the reader "without setting forth in detail the intimate acts and lustful effects in obscene, immoral, lewd and lascivious language, contrary to our statute." At the conclusion of his opinion, the trial judge stated that those *portions* of the book were not ***necessary*** to the work even treating the book as a whole, thus giving merely his judgment as to the literary necessity of some material incorporated in the work without making any specific finding that the book as a whole was obscene.

The Questions Are Substantial

The issues involved in this appeal, though emanating from the doctrines enunciated in *Winters* v. *New York,* (1947) 333 U. S. 507, 510, have never been squarely presented to or resolved by this Court. They involve crucial aspects of freedom of press and due process as these rights are presented by the First and Fourteenth Amendments to the Constitution of the United States.

There are now quite a number of state statutes similar to the one at bar, punishing and prohibiting publication and distribution of literature "containing" material that is obscene in that it corrupts the morals of youth or tends to incite youths to depraved and immoral acts.* Hence, the constitutional validity of this type of legislation is a most vital problem in the publishing world of today and a serious challenge to the aforesaid constitutional liberties.

Naturally, the appellant concedes that the police power of a state is broad enough to justify legislation prohibiting and punishing the publication and circulation of literature which is obscene, or one of its equivalents, lewd, indecent or lascivious. That point is not involved in the case at bar. However, the *Winters* case expressly suggested that there are limits to the extent to which this Court will permit obscenity statutes to interfere with constitutional freedom of expression, when it said:

> "Although we are dealing with an aspect of a free press in its relation to public morals, the prin-

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*For example: Colorado: Stat. Ann. (1935) ch. 48, sec. 217; Florida: Statutes (1951) sec. 847.01; Iowa: Code (1950) sec. 725.4; Maine: Rev. Stat. (1944) ch. 121, sec. 24; Rhode Island: Gen, Laws (1938) ch. 610, sec. 13; South Carolina: Code (1952) sec. 16-414; Tennessee: Williams Code (1934) sec. 11190; Vermont: Stat. Rev. of 1947, sec. 8490; Virginia: Code (1950) sec. 18-113; West Virginia: Code (1949) sec. 6066.

> ciples of unrestricted distribution of publications admonish us of the particular importance of a maintenance of standards of certainty in the field of criminal prosecution for violation of statutory prohibitions against distribution * * *.
>
> Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature." (Winters v. New York (1947) 333 U. S. 507, 510).

It is by now well settled that by virtue of the Fourteenth Amendment, freedom of speech and of the press is secured to all persons against abridgement by a State.

> *Grosjean* v. *American Press Co. Inc.* (1936), 297 U. S. 233, 243;
>
> *Lovell* v. *Griffin* (1937), 303 U. S. 444, 450;
>
> *Schneider* v. *State of New Jersey, Town of Irvington* (1939), 308 U. S. 147, 160;
>
> *Bridges* v. *State of California* (1941), 314 U. S. 252;
>
> *Pennekamp* v. *Florida* (1946), 328 U. S. 331, 335.

It is, of course, clear that freedom of the press is not limited to newspapers and periodicals but, in its historic connotation, comprehends every sort of publication which affords a vehicle of information and opinion (*Lovell* v. *Griffin* (1937), 303 U. S. 444, 450). Such liberty is protected at every step in the process of creation, publication and circulation, from the writing and imprinting of the work until it reaches the hands of the ultimate reader. As Mr. Justice Hughes said in the *Lovell* case, *supra,* quoting from *Ex parte Jackson* (1877), 96 U. S. 727, 733:

> "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without

> the circulation, the publication would be of little value." (Lovell v. Griffin, at p. 452)

The Michigan statute here in question is a criminal statute and as such must be strictly construed. Moreover, its constitutional validity has never been passed upon or even remotely considered by any appellate court in Michigan. Thus, when leave to appeal to the Supreme Court of Michigan was denied in this case, despite the prosecutor's concession that a "clarification of the language of" this statute was "necessary", this statute's questionable constitutional validity escaped any judicial scrutiny except that of the Recorder's court in the City of Detroit.

This statute, as we have specified above, has substantial constitutional defects which deprive any person, charged or convicted under its terms, of his constitutional rights of freedom of press and of due process of law. Moreover, the combined and cumulative impact of these defects multiplies the infringement. Thus, by its very terms, the statute incorporates a definition of obscenity which operates to punish and prohibit the circulation of a book to anyone because of the effect it might tend to have on minors. Then, if a work merely *contains* language or descriptions which are obscene only in that they tend to "incite minors to violent or depraved acts, manifestly tending to the corruption of the morals of youth", it cannot be published or distributed to any adult person in the community.

The case at bar particularly highlights this patent invasion of the appellant's constitutional right of freedom of the press because it did not deal with any actual or specifically intended distribution of the book to any minor. It was a police inspector who bought the book and brought the charge, though the work was distributed generally by newsstand sales to the public at large. There was no proof at the trial indicating the probable audience of this book.

On the other hand, there was evidence supplied by the appellant that the book was nationally advertised and distributed to the general public and without any specially stimulating promotion.

Thus, this statute and the judgment which was obtained in accordance with its terms, in effect operates as a restricted license to publish and distribute only those works which might have no ill effects upon the young. As such, we submit, it is a clear violation of the Constitutional right of free press. As Judge Learned Hand pointed out in 1913 in *United States* v. *Kennerley,* 209 F. 119, 121 (S. D., N. Y.), this type of test of obscenity would "reduce our treatment of sex to the standard of a child's library in the supposed interest of a salacious few" and "forbid all which might corrupt the most corruptible."

Moreover, the statute does not simply prohibit the distribution of a book "containing" obscene, immoral, lewd and lascivious language. Throughout the statute the concept of obscenity is unqualifiedly hinged on the phrase that such obscenity must be of the type which tends to incite minors to "violent or depraved acts" and to the "corruption of the morals of youth." The judgment of the court squarely found that sections of the book in question did just that. But the appellant contends that the statutory phrase "obscene—tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth" is not based on any standard of conduct that a person can perceive or to which he can conform.

We submit, therefore, that such legislation is not sufficiently definite to enable the average member of the public to ascertain what publications are interdicted. A criminal statute can not, we submit, require that every person distributing a book correctly determine whether the work

tends to incite youths or corrupt the morals of minors, and hence the legislation herein involved is too vague and indefinite to be constitutionally valid. *Winters* v. *New York* (1947), 333 U. S. 507; *Joseph Burstyn* v. *Wilson* (1952), 343 U. S. 495; *Commercial Pictures Corp.* v. *Regents* (1954), 346 U. S. 587; *Gelling* v. *Texas* (1952), 343 U. S. 960.

The *Commercial Pictures Corp.* case, *supra,* makes manifest that this Court, construing the constitutional guarantees of freedom of press and due process, has squarely ruled that the word "immoral" and the phrase "tend to corrupt the morals" in a prohibitory statute or as the basis of an adjudication, are too vague and indefinite to comport with due process of law and operate as an unconstitutional infringement of the freedom of press. The same must be said of the statute and judgment in the case at bar because we are in no wise informed as to what standards guided the trial court in determining that "The Devil Rides Outside" tended to incite minors to the unlawful conduct specified, or to corrupt their morals. The statute itself sets up no criteria on this subject.

Finally, another defect apparent on the face of the statute is that it does not permit a consideration of the work as a whole because it prohibits and punishes the publication and circulation of a book "containing" obscene language and descriptions. It would be impossible, we submit, for a member of the public to adequately determine whether any work, especially an apparently serious and lengthy book, contains some isolated proscribed material to be judged out of its context, ripped from the total structure of the work and without consideration of its relationship to the theme, its literary style or purposes. This indefiniteness also runs afoul of due process of law.

In the case at bar, however, there is a greater requirement for definiteness because this "containing" statute also impinges on the guaranteed constitutional freedom of press. In effect, it obviates a fair consideration of the work as a whole, or the dominant purposes of the publication. At present, most federal and state courts in which the question has been considered, have explicitly adopted the requirement that book must be judged as a whole, not by its parts taken out of context. *United States* v. *One Book Entitled "Ulysses"*, 72 F. 2d. 705 (2d. Cir. 1934); *United States* v. *Levine*, 83 F. 2d. 156 (2d. Cir. 1936); *Parmalee* v. *United States*, 113 F. 2d. 729 (D. C. Cir. 1940); *Walker* v. *Popenoe*, 148 F. 2d. 511 (D. C. Cir. 1945); *Halsey* v. *N. Y. Society*, 234 N. Y. 1, 4 (1922); *Commonwealth* v. *Gordon*, 66 Pa. D. & C. 101 (1949), *aff'd. sub. nom. Commonwealth* v. *Feigenbaum*, 166 Pa. Super, 120, 70 A. 2d. 389 (1950); *State* v. *Lerner*, 81 N. E. 2d. 282; (Ohio C. P. 1948); *New American Library of World Literature* v. *Allen*, 114 F. Supp. 823 (N. D. Ohio, E. D. 1953).

In recent cases in both the state and federal courts in Ohio, statutes punishing or prohibiting the circulation of a work "containing" an obscenity, or of "any" obscene nature, were held unconstitutional because in obviating a consideration of the work as a whole, such statutes were too broad an invasion of the freedom of press. *State* v. *Lerner* (1948), 81 N. E. 2d. 282, 285, *supra; New American Library* v. *Allen* (1953), 114 Fed. Supp. 823, 830-831, *supra.*

From this plethora of authority, it is manifest that prosecutions against works of literature are constitutionally valid only when the dominant effect of the work has been judged and the book considered as an integrated whole. Hence, statutes such as the one in the instant case,

that authorize a finding of obscenity based only on a part of the work are to that extent unconstitutional, as are judgments of obscenity similarly based.

Respectfully submitted,

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APPENDIX A

Opinion of Judge John A. Ricca
Recorder's Court, Detroit, Michigan

"In this case, the Detroit Police Department, through its officer, Inspector Herbert Case, arrested the defendant, Alfred E. Butler, for selling a book, namely, 'The Devil Rides Outside,' written by John H. Griffin, claimed to be in violation of Section 750.343 of the Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953, claiming it to be a book containing obscene, immoral, lewd, lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth. The defendant claims the action should be dismissed because the provisions of the Act under which this case is brought is repugnant to the First and Fourteenth Amendments of the Constitution of the United States, and to the Constitutional provision of the Constitution of the State of Michigan, guaranteeing the right of Free Press.

Now, without reading the various Sections, various Amendments and Sections of the Constitution, I will say that in this connection, the defendant claims that the Statute is vague and indefinite and void because it merits the finding that the book contains obscene, immoral, lewd or lascivious language, without taking into consideration the literary value of the entire book, contending that it was necessary for the author to include in his book the language and descriptions objected to in order to make the book a complete work of art, and that said language was necessary to show the conflict in the feelings, thought and action of the central figure of the book who remains unnamed, and who is torn between the desires for sexual and sensual pleasures, and the longing for a spiritual life and control over his desires. The defense contends that the language objected to is necessary, because only by the detailed description of his sexual and sensual desires and

pleasures could the author show the contrast and the intense conflict raging in the man's soul, and that to change the language or descriptions would ruin or completely impair or greatly impair, rather, the work as a book, the book as a work of art.

The sincere purpose of the author being to vividly portray this intense conflict and the final victory of good over evil.

Now, after reading the book, and after having examined the authorities cited in the briefs of counsel, and after listening to the testimony offered in this case, the Court finds that the Act under which this case is brought is not unconstitutional, as being in violation and repugnant to the First and Fourteenth Amendments of the United States Constitution or against the Section of the Michigan Constitution guaranteeing the right of the Freedom of the Press.

And the Court further finds that the State of Michigan under its police power may secure the health and welfare of its citizens and its youth, and that it had a right to pass the Act in question.

The Court further finds that the language contained in the book is obscene and immoral and lewd and lascivious, and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth. There is little question as to the sincerity of purpose of the author in writing the book, but such sincerity does not afford him the privilege or license of violating the law and seek to justify it under the guise of being absolutely necessary in order to maintain the literary value of the book.

There is little question in the mind of the Court that the author, with his beautiful command of the English language, could have portrayed to the reader the conflict within this individual, without setting forth in detail the intimate acts and lustful feelings in obscene, immoral, lewd and lascivious language, contrary to our Statute.

Now, in that connection, I've listened to the experts called by both sides and I am not convinced that that part

of the book dealing with the sexual acts and pleasures of the author was necessary, even treating the book as a whole. However, the Court does have to find that it is in violation of this particular Statute because the Statute does say that it is sufficient to contain lewd, immoral, obscene and lascivious language or description.

So that if, therefore, if there ever is a review of my decision in this matter, I am not trying in any way to evade the issue; I am trying to follow the Statute as it is. So, I am holding that the defendant is guilty because he sold a book in the City of Detroit containing this language, and also because the Court feels that even viewing the book as a whole, it was not necessary to the proper development of the theme of the book nor of the conflict expressed therein.

Therefore, the Court finds the defendant guilty of the charge and orders him to pay a fine in the amount of $100."

APPENDIX B

STATE OF MICHIGAN

IN THE

RECORDER'S COURT OF THE CITY OF DETROIT

STATE OF MICHIGAN, *Plaintiff,* —*vs*— ALFRED E. BUTLER, *Defendant.*	No. .....

MOTION TO DISMISS

TO THE HONORABLE JOHN A. RICCA, ONE OF THE JUDGES OF THE RECORDER'S COURT OF THE CITY OF DETROIT:

Now comes the above named defendant by his attorneys, MANUEL LEE ROBBINS and WILLIAM G. COMB, and moves the Court to dismiss the warrant heretofore issued in this cause under Section 750.343 P. A. 1953, Title 25, M. S. A. Sec. 28.575, for the following reasons:

1. Because the provisions of Section 740.343 P. A. 1953, Title 25, M. S. A. Sec. 28.575, referred to and incorporated in the charges against the above named defendant are repugnant to the Fourteenth Amendment to the Constitution of the United States of America.

Argument

The said amendment, in pertinent part, states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statute provides,

"Any person who shall import, print, publish, sell, possess with the intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd, or lascivious language, or obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

This motion is addressed to the fact that the said statute, in including in its prohibitions, a distribution of a book or other work "containing" the proscribed type of alleged obscenity is, on its face, therefore, so vague and indefinite in form as to permit within the scope of its language the punishment of incidents fairly within the guaranteed right of free press, protected against said interference by the said Amendment.

The defendant also moves the Court to dismiss the said warrant on the ground that the said statute by inclusion of the word "containing", permits on its face, a finding or judgment of obscenity on only part of the book and without

consideration of the entire book and the relationship of the disputed passages to its theme, and is therefore, to that extent, a violation of defendant's freedom of press guaranteed to him by the said Amendment.

Finally, the defendant also moves the Court to dismiss the warrant on the ground that the said statute on which the charge is predicated, on its face incorporates a definition of obscenity which blanketly prohibits and punishes the circulation of a book to anyone because of the effect it might tend to have on minors and therefore deprives the defendant of his constitutional right of freedom of press protected from state interference by the said Amendment.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1955
No. 548

On Appeal from the Recorder's Court of the City of Detroit.

ALFRED E. BUTLER,

Appellant,

v.

STATE OF MICHIGAN,

Appellee.

MOTION TO DISMISS APPEAL

The State of Michigan, appellee, respectfully moves that the appeal of Alfred E. Butler, appellant, be dismissed on the ground that no substantial federal question is presented for review under 28 U.S.C. § 1257 (2).

I

Statute Involved

There is drawn in question, on the ground of repugnancy to the First and Fourteenth Amendments to the Constitution of the United States, the validity of a section of a Michigan statute which was first enacted in 1846, [1] continued

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[1] Rev. Stat. Mich. 1846, Vol. II, p. 682, Chap. 158, § 13.

in successive compilations for more than 80 years, [2] embodied in the penal code of 1931 and amended in 1953. [3] Only on 3 occasions has the Michigan Supreme Court construed or applied the act. [4]

Section 343 of Michigan's penal code, as amended, so far as here applicable and as it stood when appellant sold the book in question (June 16, 1954), provides:

> "Sec. 343. Any person who shall . . . sell . . . any book . . . containing obscene, immoral, lewd or lascivious language, or obscene, immoral, lewd or lascivious . . . descriptions, [tending to incite minors to violent or depraved or immoral acts,] manifestly tending to the corruption of the morals of youth, . . . shall be guilty of a misdemeanor." [5]

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[2]

Comp. Laws Mich., 1857, § 5868, 1871, § 7703, Howell's Stat., § 9289, Comp. Laws 1897, § 11700, 1915, § 15474, and 1929, § 16829.

[3]

Penal Code, Pub. Acts 1931, No. 328, § 343, as amended by Pub. Acts 1953, No. 74, effective Oct. 2 [Comp. Laws Supp. 1948, § 750.343 (Mich. Stat. Ann.—Henderson—1954 Rev. § 28.575)].

[4]

People v. Girardin, 1 Mich. 90; People v. Ketchum, 103 Mich. 443; and People v. Lathers, 223 Mich. 92.

[5]

The bracketed phrase ["tending to incite minors to violent or depraved or immoral acts,"] was added by amendment, Pub. Acts Mich. 1953, No. 74, effective October 2.—A misdemeanor is punishable by maximum imprisonment for 90 days or a fine of $100 or both. Penal Code, § 504 [Comp. Laws 1948 Supp., § 750.504 (Stat. Ann. 1954 Rev. § 28.772)].

II

Counter-Statement of the Case

We readily concede, as we must, that the questions sought to be reviewed were raised in the court below (R. 3), that they were duly presented to the State's highest court in an application for leave to appeal (R. 349), that such application was denied (R. 367) without opinion, that the recorder's court of the city of Detroit thereupon became the court of last resort from which appeal could be taken, that appellant's notice of appeal was timely filed, and that his jurisdictional statement was transmitted to this Court and the case docketed within the prescribed time. We therefore have no technical objections to the procedure which brought the cause to this Court. The sole ground urged for dismissal is that the federal question here presented, possesses no substance. There are, however, a few facts and circumstances to be noted in addition to those set forth in appellant's jurisdictional statement.

The criminal warrant (R. 1) issued upon complaint of Herbert W. Case, an inspector on the Detroit police department (R. 25), charged that on the 16th day of June, 1954, at the city of Detroit, Michigan, the appellant

> "did then and there unlawfully sell, possess with intent to sell or offer for sale, a certain books (sic) or other thing, to wit: a pocket-sized edition book entitled "The Devil Rides Outside", by John H. Griffin, author, (a Cardinal Giant GC-14), Pocket Books, Incorporated, N.Y. Publishers, containing obscene, immoral, lewd or lascivious language, or descriptions, tending to incite minors to violent or immoral acts, manifestly tending to the corruption of the morals of youth, and which aforementioned book, the said Alfred E. Butler did un-

lawfully sell, or offer for sale or possess with intent to sell, Contrary to the form of the statute, etc."

When the case was called for trial in open court on the 7th day of July, 1954, the accused, through his counsel, waived a jury and the matter proceeded. [6]

The arresting officer testified (R. 25) that while in charge of what is known as the "censorship bureau" of the Detroit police department in 1954, a book entitled "The Devil Rides Outside," written by John H. Griffin and published by Pocket Books, Inc., had been brought to his attention by the Ludington News Company, local distributor of "Pocket Books" in Detroit. The court, however, cut off this line of inquiry by sustaining an objection of defense counsel to a question whether this book had been submitted to the witness for approval before it was placed on sale, on the ground that the offense charged was the sale of the book. And the judge likewise sustained a similar objection to further questions which might draw out the fact that when the book came to his attention the officer consulted with the prosecuting attorney and placed the book upon the prohibited list. [7]

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[6]

Under Michigan law the constitutional right to trial by jury in a misdemeanor case tried by a justice of the peace, may be waived. Code of Criminal Procedure, Chap. 3, § 3 [Comp. Laws 1948, § 763.3 (Mich. Stat. Ann. 1954 Rev. § 28.856)]. People v. Henderson, 246 Mich. 481.

[7]

It would be noted at once that Michigan has no censorship law placing prior restraints upon the publication or sale of books. Law and Contemporary Problems, Vol. XX, p. 648, "The Doctrine of Prior Restraint," by Thomas I. Emerson, Yale University.—The "censorship bureau" to which Inspector Case refers, is con-

The book was sold by appellant to this police officer on the 16th day of June, 1954 (R. 27) at the Quality Photo Shop on Fourth avenue, Detroit for the sum of 50 cents and 2 cents sales tax, and during the trial (R. 28) it was identified and offered and received in evidence as Exhibit 1. Transmitted to the Michigan Supreme Court as a part of appellant's application for leave to appeal, it was deposited in the office of the clerk for consideration of the justices. A true copy of this exhibit has been certified as Vol. III of the record on file in this cause.

The arresting officer also testified (R. 32) he had compiled [and mimeographed] 101 excerpts from the book which were offered and received in evidence as Exhibit 2 over counsel's objection based on the doctrine that the book must be viewed as a whole and that any other view, permitting it to be judged by excerpts, would violate the prevailing rule in obscenity cases. [8] This exhibit was transmitted to the Michigan Supreme Court with the application for leave to appeal and was duly considered together with the book itself (Exhibit 1). A certified copy of Exhibit 2 [the excerpts] constitutes part of the Michigan

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ducted by the Detroit police department under a wholly voluntary arrangement with book distributors in cooperation with the prosecuting attorney upon whose advisory opinions all rely in their determination to protect youth from the evil effects of obscene literature. Please see law review article, "Literature, the Law of Obscenity, and the Constitution," Minnesota Law Review, Vol. 38, p. 295 at p. 314, for a description of the Detroit plan.

[8]

This brings into focus the conflict between the Hicklin rule of Lord Cockburn, Regina v. Hicklin, L.R., 3 Q.B. 360 and the rule first applied in U.S. v. One Book, Ulysses, 72 F. 2d 709.

Supreme Court record in this cause (R., Vol. II, pp. 368-395). We publish it as Appendix "A," *post*, pp. 1a - 53a.[9]

It is also important to note that defense counsel stated (R. 14-15) that if the court's ruling on his motion to dismiss the complaint should be in his favor, this paper book would appear in drug stores, book stores for sale, freely accessible throughout the entire community.

On this subject, Freeman Lewis, executive vice-president of Pocket Books, Inc., publisher of this book (R. 56), testified (R. 61) that his company does no advertising in books but puts them through racks seen in drug stores and cigar stores. It is sold and distributed (R. 70) through a group known as independent wholesalers, some 800 of them, in the United States and Canada.

Approximately 50 per cent of outlets for such books are drug stores (R. 70); the rest would be 5 and 10 cent stores, book stores, department stores, cigar stores and newstands. In the drug stores they are displayed. [10]

This witness further testified (R. 71) that some of the places mentioned, including drug stores, sell school supplies, and some of these stores are located near schools.

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[9]

While it is with reluctance that we incorporate this type of literature in the printed record, we deem it essential to a clear understanding of the questions presented and in support of our theory that in this book, because of the volume and character of such matter, obscenity is the dominant effect.

[10]

It is a fair inference drawn from well-known facts that such books sold in drug stores where high school youngsters congregate, reach those whom the Michigan statute is designed to protect.

III

The Argument

Since it would not prove helpful at this point to collate the host of judicial decisions and other expressions of opinion in the conflict between constitutional liberty and unrestrained license in the publication and sale of pornographic or near-pornographic literature,[11] we merely offer a few suggestions to aid the Court in determining whether probable jurisdiction should be noted:

1. Since the words "obscene, lewd or lascivious," as employed in the Michigan statute here challenged, have been deemed permissible in describing a criminal offense, without unconstitutional vagueness, and since books are subject to control if lewd, obscene or profane, *Chaplinsky v. New Hampshire,* 315 U.S. 568, jurisdiction of this Court is not sustained by *Winters v. New York,* 333 U.S. 507, cited for that purpose on page 3 of appellant's jurisdictional statement. Moreover, as noted by Mr. Justice Reed in *Winters,* the Court goes far to uphold state statutes that deal with offenses, difficult to define, when they are not entwined with limitations on free expression, 333 U.S. at 517. Nor, we venture to say, are the phrases "tending to incite minors to violent or depraved or immoral acts," or "manifestly tending to the corruption of the morals of youth" too vague to stand the test of constitutionality when coupled as they are in § 343 of the Michigan penal

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[11]

E.g. please see: Literature, the Law of Obscenity, and the Constitution, Minn. Law Review, Vol. 38, p. 295; Symposium on Obscenity and the Arts, Vol. XX, Duke University School of Law, No. 4, Autumn 1955; Report of Select Committee on Current Pornographic Materials, House Report No. 2510, 82nd Congress, 2d Session, Dec. 31, 1952.

code with the permissible words "obscene, immoral, lewd or lascivious." Please see also, *Jordan v. DeGorge*, 341 U.S. 223, holding that the phrase "crime involving moral turpitude" does not lack sufficiently definite standards and that the statute considered by the Court was not unconstitutional for vagueness.

2. Since the "chief purpose" of the constitutional guaranty of liberty of the press is "to prevent previous restraints upon publication," [12] and inasmuch as Michigan's legislative proscription of the obscene does not establish censorship, jurisdiction of this Court is not sustained by *Burstyn v. Wilson*, 343 U.S. 495, *Gelling v. Texas*, 343 U.S. 960, or by *Superior Films v. Department of Education*, 346 U.S. 587, [13] likewise cited for that purpose in appellant's jurisdictional statement, pp. 3 and 14.

Burstyn v. Wilson, supra, 343 U.S. 495, condemns provisions of the New York Education Act which forbid the commercial showing of any motion picture film without a license and authorize denial of a license on a censor's conclusion that a film is "sacrilegious," as a prior restraint on freedom of speech and of the press under the First Amendment, made applicable to the States by the Fourteenth Amendment. *Gelling v. Texas, supra*, 346 U.S. 960, merely followed *Burstyn* and *Winters*, with a concurring opinion by Mr. Justice Frankfurter that in his view the ordinance in question lacked definiteness, and a concurring opinion by Mr. Justice Douglas condemning the evil of prior restraint through censorship. Likewise, *Superior Films*,

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[12]

Near v. Minnesota, 283 U.S. 697, 713.

[13]

Cited in appellant's statement sub nom Commercial Pictures Corporation v. Regents, 346 U.S. 587.

supra, 346 U.S. 587, merely reversed judgments of Ohio and New York without opinion, on the strength of *Burstyn,* while Mr. Justice Douglas and Mr. Justice Black, concurring, once again cited *Near v. Minnesota,* 283 U.S. 697, in condemning censorship. Obviously, since the Michigan legislature has not set up a censorship over the sale of books, these decisions of the Court have no application.

3. Counsel urge in their jurisdictional statement, p. 12, that § 343 of the Michigan Penal Code by use of the word "containing" obviates a fair consideration of the work as a whole, or the dominant purpose of the publication, thus impinging on the guaranteed constitutional freedom of press. And it is said that "at present, most federal and state courts in which the question has been considered, have explicitly adopted the requirement that a book must be judged as a whole, not by its parts taken out of context," citing:

United States v. One Book-Ulysses, 2 Cir., 72 F. 2d 705;

United States v. Levine, 2d Cir., 83 F. 2d 156;

Parmalee v. United States, D.C. Cir., 113 F. 2d 729;

Walker v. Popenoe, D.C. Cir., 149 F. 2d 511;

Halsey v. N.Y. Society, 234 N.Y. 1, 4;

Commonwealth v. Gordon, 66 Pa. D. & C. 101; affirmed sub. nom. *Commonwealth v. Feigenbaum,* 166 Pa. Super. 120; 70 A. 2d 389;

State v. Lerner (Ohio C.P. 1948), 81 N.E. 2d 282;

New American Library of World Literature v. Allen, N.D. Ohio, 114 F. Supp. 823.

It is our position: (a) that the Michigan law when properly construed does not obviate the rule in *Ulysses, supra;* (b) that doubt is cast upon applicability of such a rule as a constitutional test and Michigan in exertion of State police power may protect her youth from the corrupting influence of obscene books and citizens of the state from the evil results of juvenile delinquency; [14] and (c) even though the rule in *Ulysses* be applied, the book here in question, viewed as a whole, is dominantly obscene while its distribution in cheap, paper-cover format through drug store outlets is obviously intended for minors.

a. Section 343 of the Michigan Penal Code among other things proscribes the sale of "any book . . . *containing* obscene descriptions . . . manifestly tending to the corruption of the morals of youth," and it is upon the word "containing" that appellant's counsel lay stress. It is noteworthy, however, that the section does not read "containing *any* obscene . . . descriptions" and as we view it, if the *Ulysses* rule is applicable, the book in question here may be judged as a whole, or its dominant effect may be considered. It is on this ground, we think, that the Ohio cases cited in appellant's statement may be distinguished from the case at bar and one from the other.

Thus in *State v. Lerner, supra,* (Ohio C.P. 1948), 81 N.E. 2d 282, Judge Struble considered and struck down as unconstitutional § 13035 G.C.O., as amended, which penalized the sale etc. of an obscene book, magazine, etc., "*not wholly obscene* but containing lewd or lascivious articles, advertisements" etc. But in *New American Library of World Literature v. Allen,* 114 F. Supp. 823, the court held

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[14]

Indeed it might be said that Michigan, if its legislature so ordained, could without constitutional offense adopt the much-criticized, outmoded code of mid-Victorian morals.

that a city ordinance prohibiting sale or distribution of any book etc. "of *any* obscene or immoral nature" might be read as proscribing books of "*an*" obscene or immoral nature, and as thus read, the ordinance might be construed in harmony with the modern test of obscenity as not proscribing books that merely contain "*some*" obscenity. Thus construed, the validity of the ordinance was upheld as against the contention that it violated freedom of the press. [15]

b. It is significant, however, that the "modern rule" had its genesis in *United States v. One Book-Ulysses, supra,* not as a test of constitutionality under the First and 14th Amendments, but rather as a rule of statutory construction or as a test to determine as a matter of fact in a given set of facts and circumstances whether a designated book was "obscene." Thus, in *Ulysses* it was stated at the outset of Judge Augustus Hand's opinion that the appeal "raises sharply the question of the proper interpretation of section 305 (a) of the Tariff Act of 1930 (19 USCA § 1305-a)." And he concluded that the book as a whole did not fall within the statute. Judge Manton, who for all his subsequent faults, was a good lawyer and sound judge, vigorously dissented. [16]

No statute was declared infirm by the second circuit in *United States v. Levine,* 83 F 2d 156, but there the charge of the trial judge led to error in construing and applying

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[15]

What was condemned in this case and duly restrained by injunction was a censorship conducted by a chief of police without, however, imposing any restraint upon his power to enforce the ordinance by arrest and prosecution.

[16]

Citing: Rosen v. U.S., 161 U.S. 29; Dunlop v. U.S., 165 U.S. 486; U.S. v. Dennett, 39 F. 2d 564 and others.

the postal laws. The instruction deemed erroneous was to the effect that in a prosecution for sending obscene advertisements through the mails, the statute was to protect the young and immature and ignorant and those who were sensually inclined and that the jury should regard the effect of books on their minds rather than on mature and highly intelligent people, and that the statute condemned a book which contained a single passage which would excite lustful or sensual desires. While the court deemed this instruction reversible, Judge Learned Hand added, p. 157, that "our reversal does not mean that on another trial the proper standard can under no circumstances refer to adolescents," stressing the distinction between a sale to a youth and a general sale. [17]

In *Parmalee v. United States,* D.C. Cir., 113 F. 2d 729, another prior restraint upon publication was involved, libel, confiscation and destruction of an obscene book so alleged under the Tariff Law of the United States. The court repudiated the Hicklin Rule, Mr. Associate Justice Vinson dissenting in a well-reasoned opinion, 113 F. 2d at 738.

An order of a postmaster barring plaintiff's pamphlet from the mails *without a hearing* was deemed a violation of due process in *Walker v. Popenoe,* D.C. Cir., 149 F. 2d 334.

Section 1141 of the New York Penal Law provides that a person who sells any obscene, lascivious, indecent or disgusting book is guilty of a misdemeanor. The defendant in *Halsey v. New York Society,* 234 N.Y. 1, by complaint lodged with a magistrate caused the arrest and prosecu-

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[17]

At bar, while the sale was in a sense "general," 50% of the books were sold in drug stores where school children congregate and where school supplies are sold.

tion of the plaintiff for selling such a book and the latter was acquitted. He brought suit for malicious prosecution. The court of appeals held, *inter alia*, that in such an action

> "whether a book, the work of a great author, written in admirable style, which has become a part of classical literature and which has been widely sold but which contains many indecent paragraphs, is of such a character as to justify the reasonable belief that its sale was a violation of section 1141 of the Penal Law, is a question for and properly submitted to the jury in an action for malicious prosecution. . . . "

Certain it is that in *Halsey*, the New York statute was not deemed unconstitutional.

While it is true that constitutional considerations governed state courts in the Pennsylvania and Ohio cases cited by appellant, his counsel, unless we are much mistaken, has failed to point to a Federal decision striking down a State law on the ground that its provisions obviated application of the so-called "modern rule." The closest approach to consideration of such a question was *Doubleday & Co., Inc. v. New York*, 335 U.S. 848, affirming by equally divided vote, and without opinion, a conviction under Section 1141 of the New York Penal Law. In fact, no opinions were written by any court, except for a dissenting opinion by Judge Perlman.

c. During oral presentation of the case of *Doubleday* to this Court, 17 LW 3119, while speaking of a book which in our view "contains" obscenity and pornography in lesser volume that those passages found in THE DEVIL RIDES OUTSIDE, counsel for the State of New York merely said:

"The statute on which the judgment rests is valid. A reading of the book by this Court will demonstrate that the finding of obscenity is reasonable. I therefore submit that the judgment below should be affirmed."

We would close with this thought: the book now under scrutiny is, we respectfully submit, dominantly pornographic as tested by the Hicklin Rule or the modern doctrine. This is not a borderline case. The day may come when a book will be condemned by some Michigan court because it contains a paragraph or two of obscene import. Here, however, the entire volume is permeated with obscenity. And when the excerpts published in this motion as Appendix "A" [most reluctantly], are restored to context, it will be found, we respectfully submit, despite the opinions of expert witnesses to the contrary, that the book considered as a whole is indecent and obscene.

It is therefore respectfully submitted that our motion to dismiss should be granted.

Respectfully Submitted,

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Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
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The Capitol, Lansing 2, Mich.

APPENDIX

APPENDIX "A"

Copy of People's Exhibit 2, filed with Defendant's Application for Leave to Appeal to Michigan Supreme Court.

"THE DEVIL RIDES OUTSIDE"

Author: John H. Griffin
Publisher: Pocket Books
Distributor: Ludington News
Withheld: 2-26-54

(Excerpt 1 from Page 4)

Those damned sons-of-bitches in our government!

He explains with luminous pride how he personally, after having first explored each girl's potentialities to the fullest, saw to it that only the most interesting and accomplished of them stayed on to satisfy the physical needs of his clients.

"Nowhere, nowhere, M'sieu—not even in Paris—could you find such wonderful girls at such reasonable prices."

"Too bad I didn't come here sooner," I tell him.

I offer him another cigarette and he cranes his head in my direction. His face, reflected in the lights, is sober.

"Listen, my friend," he says urgingly, without taking the cigarette from his lips, "I know some girls in the City. Let me drive you there and we can each get one for the night."

(Excerpt 2 from Page 8)

Lips seen close with their fine ridges and their wetness, and the feel of a belly against your belly, of a belly beneath your mouth—moving, live, warm.

I look at the straw mattress of my cot and at its covering roughness of blanket, and I remember the good bed and white linens of last night, and how they covered a nakedness of breasts and navel and warm thighs, and smooth,

sweet-smelling flesh of shoulder and back. And I am sick for wanting the safety of that bed, for wanting to breathe the breath of another and to wake in the night and feel her against me.

(Excerpt 3 from Page 9)

Sometime in the night I awaken and reach for covers which aren't there. In a half-dream I feel for the crease of her belly and find only the unyielding stiffness of evil-smelling straw beneath the rough muslin mattress cover. Sleep is a torture of discomfort.

(Excerpt 4 from Page 26)

"M'sieu!" he says reproachfully—"please! I'm not a pimp, after all. Slightly tinged with pimpishness perhaps, but never sinking to such depths, really. If you think—"

(Excerpt 5 from Page 27)

"I don't think you like to sleep by yourself. You're as bad as I used to be. I bet if I could find you a nice, sweet-smelling girl—"

(Excerpt 6 from Page 31)

"These bastards! These ignorant bastards!"

(Excerpt 7 from Page 32)

She is completely sexless—the sort of woman with whom one sleeps, with whom one makes love merely because she's there beside you and it's easy to do. Above all, the sort of savagely fecund creature who can't be breathed upon without becoming pregnant.

(Excerpt 8 from Page 58)

Instead of the stain of last night's dream, there is the brightness of freshly washed and ironed sheets. One of the monks has changed my bed and knows of the secret dream, and of the fever of the night.

(Excerpt 9 from Page 65)

I long for Paris—to be warm, and to get drunk, and to be happy and shallow, and to know a bed and a woman, and to hear noises and see lights . . .

I leak on the ground. It makes a terrible noise; it seems I shall never finish.

(Excerpt 10 from Page 78)

I think of sleeping warm sleep, with an arm thrown across the soft belly of my Lucette.

(Excerpt 11 from Page 80)

"Tell me, do you ever hear from that girl of yours back in Paris?" "Not a word."

(Excerpt 12 from Page 81)

He grins. "Just like I told you, she's probably with somebody else. How long you been without a girl now?"

"Six weeks, about."

"Oh, la! That's a long time. You must be bursting."

"It's too cold to burst, Salesky," I laugh.

He leans his head close to me, grinning. "When you were in Paris, for example, did you ever go to the Bois de Boulogne at night?"

"Naturally. What student hasn't?"

"The best in all Paris is in the forest there. And free, too," he nods. "A man can get any kind of girl there."

I say nothing. The road is covered with ice and Salesky's cab moves still more carefully. He stops for a moment to relight his pipe.

"Tell me, M'sieu," he says above the shifting of gears, "While you were with your girl did you fool around with anyone else?"

"No!" I answer sharply. "What kind of a person do you think I am? She was a nice girl and I never thought of going to any one else."

"Honest?" He sounds incredulous.

"Honest. I was absolutely faithful to her. Oh, occasionally when she was spending a week end at home I'd find myself another girl, but not often."

"I have a girl friend on this side of the River—Made Rouen, she runs a little spice shop. She's given me two children, which is more than my wife ever did. Is it bad for a man to love his wife and yet want children by another woman?" His face becomes serious. Opening the window he empties pipe ashes outside.

I don't answer.

"Anyway," he goes on, "there's not a woman in the Village who wouldn't like to have me in her bed—or you, M'sieu, or any other man. But they're mean. They dream

(Excerpt 13 from Page 82

of it and condemn me, Salesky, because I've done it with somebody else. I tell you, it's a devil's paradise here."

"I can't believe that, my friend. These people seem all right. Besides, you'd be talked about anywhere in the world for keeping two women to sleep with."

"Would they run and tell my wife?" he says angrily. "Would they keep watch on my mistress's house, and count the times, and run tell my wife? No. But that's what they do here. They're bitches. Oh, there are a few good ones here, but they keep to themselves." She associates with the other bitches without being a bitch herself . . . Ah, look at that pretty girl there. Don't often see one that good-looking."

He jams on the brakes. The car skids to a halt near a young girl walking with her back to us. She turns and walks hesitatingly toward the car.

"Look at that, M'sieu," Salesky whispers rapturously. "Those little breasts—how'd you like to have a handful of that, for . . .

The girl approaches his open window and he asks, in an

exaggeratedly lecherous Parisian accent, if we can't take her somewhere. She giggles a flushed refusal, and we drive on.

"Salesky, you fool, you embarrassed the poor kid half out of her wits."

"But no, she was pleased. Couldn't you see that? She'll be lost in daydreams all week now, thinking of a big hulk of a man like yourself. At night she'll lay against her pillow, imagining it's you. We did her a favor, I tell you."

"You bark loud, my friend," I taunt. "But I bet you'd have been lost if she'd got in with us."

"Oh, it wasn't for myself, M'sieu," he grins. "It was for you."

(Excerpt 14 from Page 83)

"You could've cooled her off a little in the back seat. You could've sprinkled her little garden for her, eh?"

"Look," he says, "be a good boy and do me a favor." I hesitate, holding the door half-open. "Sure. What is it?" "My girl lives across the way, and I don't get to see her often. I'm always watched. But the streets are deserted now. If you were to stay in the car while I went in, none of these bitches would suspect. I'll make it short, M'sieu, just a few minutes."

(Excerpt 15 from Page 84)

"Wasn't she there?" I ask.

"Yes, she was there."

"Was something wrong?"

"Not at all, M'sieu. Didn't want to keep you waiting in the car. Thanks a thousand times for helping me. It was wonderful—but quick, eh? Quicker than you could have handled it, young buck that you are. I didn't even take off my coat, M'sieu."

"Yes, without taking off my coat. 'Onto the bed with you!' I shouted at her. 'Onto the bed, my belle!' And

zoom! her needle was good and well threaded. Wonderful how these things work, eh?"

"Oh, shut up, shut up. No one else could've talked me into such a thing. But if you need a witness let me know. I'll swear you were under the car all the time."

(Excerpt 16 from Page 94)

"Also, there's a girl in Paris, Father. We lived together as students years ago. And when I returned after the war we got a flat together. It's impossible for me to be in Paris without eventually going back to her."

From the warmth sitting beside me the voice asks quietly, "You do not think she would understand, my son?"

"Yes, she'd understand," I reply, "and approve. It's not her fault. It's mine."

"Perhaps you could marry her?"

"I suppose I could, but it's not like that, Father. We aren't in love. We're just used to each other. We pool our money, and she does the cooking and washing. She's still in art school. It's always been a convenience for both of us. Two poor students can live well that way. We're good comrades, we sleep well together. But she doesn't want me for a husband and I don't want her for a wife."

"Have you had no children with this arrangement?"

"No, Father. We've been careful."

(Excerpt 17 from Page 104)

When a man loves a woman, then—and only then—will the climax come in the performance of the sex act and not in the contemplation of it.

(Excerpt 18 from Page 115)

I look at her and I want her. I want to have her in a filth as great as the filth of my feelings. But she leans forward, and I know the stink of her fat folds. Without speaking I leave. But the harm has been done. My legs become

weak, and my face burns with the uncontrollable desire to find something to take into a bed.

(Excerpt 19 from Page 116

"It must be very difficult, Madam," I say to her, fighting to keep my voice even, "when once you you've been married, to get used to living without love."

"Ah yes, Monsieur," she says softly. "It is—very difficult."

"That relationship between a man and a woman can be made such a beautiful thing," I say musingly, and then, forcing deep sympathy into my voice, "I've never been married but I've had many girls, and I know what it can mean. I've always thought of it as a great privilege."

My stomach prods me to hurry. I know my way on this ground. I am at home with such disconcerting inanities. But this is too rushed, too obvious—too laughably obvious.

She smiles, looking at her cup. "You're quite a Don Juan, Monsieur. You embarrass me."

"Not a Don Juan at all, Madame. I'm just giving you credit for being what you are—a beautiful woman of the world. But you must forgive me. I'm being honest. I

(Excerpt 20 from Page 117)

think we both want the same thing, and I think we can help each other. If I'm wrong I apologize."

"You're really very nice, Monsieur"—nonchalantly, with ease and grace of manner. "Perhaps we could have dinner tonight?"

"That would be fine. But look, I must return after dinner and we have an afternoon before us. Let me get a room at the hotel where we can be warm. We can visit there until dinner time." My eagerness catches her, coloring her throat into a blush with the beginnings of desire. She smiles a yes without answering. I pay the two checks, take her arm, and we go to the hotel. The hotel keeper and his

wife, who remember this young man, smile openly, delighted at my luck. They give me a room with bath and have the grace not to mention that we have no bags. My warmth toward them grows.

The room is heated—blessed heat. I help her off with her wraps, with the touches such closeness indicates. We sit on the bed and light cigarettes, feeling frozen feet beginning to come to life. The actors of the play continue acting, for it's not yet the time when acting can cease. With a loud but honestly felt sigh, I take her hand in my own to study it, and her pressure answers mine. "You don't know what it means to hold someone's hand again," I tell her.

"I feel the same way. You're very sympathetic, my friend."

She glances up at me—quickly, half-tentatively.

"And you're very beautiful."

We fondle hands and then arms, until words die in a vast, sobbing, all-engulfing joining of our mouths. The approach is forgotten as the kiss becomes its own fever. Burning outpouring of her tensions into me and mine into her, resolving all tensions into the health and strength of ministrations from a common source. Our breaths catch like two people who drink too long after great thirst. The feverish intensity of starvation flows out from us and we relax our bodies, fainting against each other in relief as muscles melt

(Excerpt 21 from Page 118)

and the kiss insinuates itself as a pure line of pleasure between us. Now the cauterizing initial healing has taken place. Now the therapy of a needed kiss is accomplished. Now we can take pleasure one from the other. The dissonance, the ugliness leave, and a clumsiness of beginnings gives way to the ineffable grace of animal responses. As the soul is purged of its hermetic smallness, of its grit of modesty, the demands of our bodies become more powerful.

Breathless I lift my face from hers. "I can't believe it," I gasp. "Ive never felt like this before—never. It's almost like we're really one. Do you feel it too?"

"Yes, yes," she murmers passionately. "Yes."

I hold her there in wonder, tenderly stroking her cheek, brushing the fine blond hair back from her forehead: small movements of waiting, movements suspended dimensionless. And at last her breathing subsides against my breast, and my hands stop trembling. Reality slowly returns to the room.

"Now," I urge gently when I feel I can speak, "you must let me go and take a bath. I should have done it before, but I didn't know we'd meet. You can rest here on the bed."

"Can't I help you?"

"No, I'd never get through if you did. And I'd rather come back to you here in bed."

Leaving the bathroom door open, I throw my clothes on the floor. While the hot water is still running I step into the tub. The soap spreads and cleans. The nearly forgotten luxury of soap bubbles on wetness of skin is enchanting. I soap and rinse again and again in the warm water. There is no longer any struggle between my two selves. We're both very happy. Poor Father Clement! I smile, imagining that he imagines me in a movie.

"You're awfully slow, my dear," comes her voice from the bedroom.

"Are you in bed?"

"Yes, and I'm lonely."

"But I haven't had a bath in three months."

"Oh, la! Then take plenty of time."

(Excerpt 22 from Page 119)

I splash about in the water. "Come in here, won't you?" I call to her. "I need some help."

She enters the steaming room, with a sheet around her,

to find me lying in the tub. "Ah!" she exclaims, "that's pretty, for example."

"Would you please wash my back?"

"With pleasure, M'sieu." She says this in imitation of the broad patois of the farm women. "But how can I wash M'sieu's back unless M'sieu turns over?"

I turn on my stomach in the warm soapy water. In silence she scrubs the length of my back, seriously, as if I were a child. I turn back over, splashing water onto the stone floor.

"Thanks very much."

"Not at all. And I was good about it, eh? No tricks."

"You were wise. It's been a long time since I last made love. I'm very delicate."

She changes the subject: "Tell me, how do you bathe in the Monastery?"

"In a little tub—a foot bathtub—a little at a time. But the cells are unheated and it's impossible to bathe in this weather. But I would have anyway, if I'd known we were going to meet."

"Today is the Feast of St. Hilaire. You wouldn't bathe for him, but you will for me. I'm flattered."

"I doubt if he'd have appreciated it as much as you will. Now if you'll please leave, Madame, I'll dry myself."

"Strange—you let me wash you, and you don't have anything on in the bathtub; and yet you want me to leave while you dry. Why is that?"

"I don't know. It just seems to work that way."

The smiles stop. With the end of my bath approaches the instant of consummation; the beginnings of nervousness in both of us. She returns to the bed.

When I am dry I turn to go to her. Breath catches in my throat, and I run to the bed. Without looking, without thinking, I draw myself into it, under the covers and into the oblivion of her body. We lie close, discovering in blind embrace the secrets of the warmth within us. There's no

time and no reality as arms bring tightness to our embrace,

(Excerpt 23 from Page 120)

as our stomaches press together until they dissolve into one. No longer do we kiss only with our mouths drinking each other—our arms, our legs, our stomachs join in the kiss, becoming fused in a caress that envelops all. Hands descend the length of warm flesh, till they come to rest in the fleshiness of buttocks, the very feel of which fills us with profound drunkenness. Hands search further into our innermost selves, and without losing the thin fine line of sensuality that floats through closed eyelids . . . we become slowly united.

No longer a man and a woman, but a revolving bodiless emotion. Deeply, more deeply into the liquidness of her, into the void of swirling sensation. Slowly like the waves of a warm ocean, inexorable, undulating out of space and time. Blackness and silence in the roaring of two become one. Angles, brilliant behind eyes that swim in detached body, floating in space.

Richness and warmth and coolness of the wet on one's lips. Lips against her face feeling skin pores. And smoothness of soft cheek and shoulder. Squares mist milkily, and from the stillness and the dark the curve mounts immutably rhythmic, in ever-mounting intensity. A new gathering of momentum. And through the darkness an occasional glimpse of concentrated white. Now it begins to grow, this strangeness, turning over and over. Slowly, slowly, turning steadily, and the rhythm follows ever [illegible]wing. And now from the very bottom of a faraway numbness is the quivering beginning of trembling. It's unbearable. The numbness is punctured. Momentum gathers. And the long sigh, unheard, pouring forth from the edges of consummation. From a distance, far within, curving swiftly now, a fast sighing swaying motion curling over and above and around. Beating, beating against the drum of the being, pounding louder

and louder till there can be no more loudness, but increasing steadily into the very pulse of the blood. And now before the eyes, the before-hinted, now-brilliant flashing white, growing and expanding to break spattering against eyelids. And from without, a fog of ever-thickening intensity, sparkling and harsh to imagined sight. Simultaneous welling-up of the heaving exploding brilliance, and the beating, now-pounding rhythm piling sound and muffled

(Excerpt 24 from Page 121)

obscenity, ever expanding above and around, turning faster and faster above the moaned "No! No!" Tightening of the heartbeat, drawing-up of the ribbon. Ecstatic point between life and death when all becomes hermetic and rigid. The pause in space without pausing in movement. The waiting without breathing. The muffled upward surge of the entire being to the crest of the wave, to the very top. Up and up, soaring high onto the peak of noise and heat. The whirling gyrating splash of warning to the mind. Louder now into the head and the brain. Upheaved violence of the belly. This is the flashing of the stars, the cleansing burning of the insides into fervent ash. And the taste of blood grows stronger on the rigid tongue. Finally the broad expansiveness of union, of man's warmness without pain. Sounds descend thinner, slower, draining away to sighing quiet. And the felt pulse of the rhythm faints away to enveloping blackness. The slow easy downhill slide with a final unheard catching of the breath, leading onward and downward until the curve slows to stop against the dark. And down, down again slantingly, quietly to a depth beneath the seas. Beyond movement to stillness. Then the loosening, the resumption of breathing. Gratitude, and the serenity of silent waters.

Heads fall apart. Light returns. There is rest now without moving. Rest with the body spent, the head facing down on the pillow of her shoulder. Rest for a long time

without becoming separated, feeling only the warmth of her breathing and the stir of her hair against my cheek. Life returns. The room becomes real. Without moving away we roll to our sides, still tightly clasped. And we sleep.

For how long I don't know. Without awakening I find myself awake, still enclosed in her arms. She breathes heavily in her sleep. We are no longer united. The room no longer moves. It remains quiet in its smallness, telling the tale better than we could tell it.

The gray light of winter's afternoon filters through the dusty lace curtains beside our bed. A rug on the floor has lost its color through wear and the accumulation of dust. It is a thin, pathetic covering for the blackened wood floors.

(Excerpt 25 from Page 122)

On a gold-fringed overstuffed chair near the window, her clothes are draped-pinks of underclothes and darkness of hose hung neatly over the arm. Through the bathroom door can be seen my clothes, in a filthy pile where I left them. And on the tub a roughness of damp towel hanging at a thrown angle.

Room of heavy shadows lighted only by somber afternoon, and soundless. A room which would be intolerable if I were here alone, but which has taken on a fattish, conniving atmosphere because I am in bed with something human, with something that lives and breathes and sleeps.

In Her dreams she turns on her back. My head rests on her shoulder beneath the blankets. In the microscopic perspective of nearness the coarsely woven pillowcase, white and wrinkled, is brought into clarity of focus. Every thread can be seen, and minute portions of brown starch-stain streak the pattern of freshness. The eye shifts to shoulder flesh and focuses on an inch of skin, seeing pores and smoothness and oiliness and one speck of dryness that irritates—white, flaky, dead. Moving my cheek against it I

brush it away. My head cradled on her shoulder is half-covered with the blanket. We lie here warm and drying—and she sleeps.

Smells from under covers, smells when sight grows tired. Odors of neutral nakedness of flesh. Odors of shoulder and belly and of the dried hint of frenzy, mingling with those of blanket wool and coarse linens. Odors of the sweetness of unperfumed being, captured in a warmth of darkness beneath covers. Profound satisfaction of the senses by touching and breathing, and the sleep of a body in the arms of wakefulness. I raise my leg across her thighs and lie close to her, with the inside of my leg, above her knee, resting on her stomach.

Without opening her eyes she murmurs drowsily, "You're suffocating me, my friend."

"Oh, I'm sorry. I didn't know you were awake." I raise my head. Her eyes open to see a face that has lost its strain, and she smiles. "Are you happy, my darling?" she asks. "It was marvelous. Shall we go again?"

(Excerpt 26 from Page 123)

"No—some other time perhaps. The next time wouldn't equal the first and we'd both begin to regret it."

"But I want you."

"No, please—don't." she reaches down and moves my hand away.

"All right, my dear," I say coolly. "Then let's get up. I can't lie here with you without trying."

"Yes, go into the bathroom and dress," she says almost apologetically. "I'll spread up the bed and get dressed myself."

"Fine—so modesty returns. Very well, Madame, up with you."

I go into the bathroom, sickened at having to put on my filthy clothes again. We continue talking as we dress. Gradually with the ebbing of desire, my resentment leaves.

I become conscious of a growing gratitude toward this woman who has given me so much. I call through the door, "I'll treat you to the best dinner in town—all you can eat. This hotel has excellent food."

She joins me in the bathroom, standing before the mirror combing her hair. "I'm supposed to take dinner in the Village," she says through a mouthful of hairpins. "Maybe we'd better go back."

"Nonsense, don't tell me you're the sort who like to make love and run?"

"No, but food is high here. There's no need for you to spend any more on me."

The thought that I have bought her only a cup of hot chocolate strikes us both as ridiculous, and we laugh like two children.

"Ah," I chuckle, "two and a half francs. You're an expensive woman. But I'm a perfectionist. Unless I fill your stomach from the top this time, I'll feel my work is only half-done."

"You are a pig . . . But really, let's eat somewhere else. These people would think me brazen. They'll suspect what we've been doing."

"And for once their suspicions will be justified. No," I grin, "we'll eat here and give our friends the pleasure of being right about us."

(Excerpt 27 from Page 124)

"But I'm not a brazen woman."

"I know you're not, my dear. But the point is, you've been doing all afternoon just what a brazen woman would do."

"You embarrass me." She is offended. I have gone too far.

"Come now," I say softly, "I'm only joking. You know that. We'll eat wherever you like. And believe me, I want to take you to dinner because I like to be with you, and

not just because I'm grateful."

She lifts her face and smiles. "All right."

"Now, shall I keep this room for a few days? We can come here every afternoon."

"But what about your work at the Monastery? Surely you can't leave that? Didn't you tell me your work was your life, your only passion?" The suggestion of a smile is at the corners of her mouth. "Isn't that what you said?"

"Yes, but not all my life," I mutter, feeling like a fool. "And I find I have other passions, too."

"Even so, I don't think we'd better keep the room. I must tell you, as much pleasure as this has given me and as wonderful as it's been, I'm here for another purpose. I'll confess what we've done, receive penance, and make every effort not to do it again."

I shrug my shoulders. "You're probably right. This couldn't be helped today. I know what you're trying to do and I respect you for it. I'm afraid I've set you back. But it's easy to be virtuous once passion is satisfied. I feel pretty Christian right now, myself. But what shall we do when we feel it again? Can what we've done be so terribly wrong?"

She is silent a moment. "I don't know," she hesitates. "But I'll do as the priest says."

We walk down the carpeted stairs to the lobby. I stop to pay the bill while she waits in the hall near the entrance.

The proprietor feigns surprise when I approach the desk. "But, M'sieu, you arrived only a few hours ago. We can't charge you for a room you've scarcely used. No, there'll be no charge. We'll just put someone else in the room, and since you haven't slept in the bed we won't have to change the linens."

(Excerpt 28 from Page 125)

I put some bills on the desk. "Here, take the money and an extra twenty-five francs for the chambermaid."

"But, M'sieu, I don't understand. Since you haven't slept in the room, what will the chambermaid have to do?"

"Believe me, my friend, the room has been well used. And the chambermaid will more than earn her twenty-five francs."

He would like to know more, but I turn away and join my companion at the door.

(Excerpt 29 from Page 141)

At this hour yesterday we woke in the same bed from a naked sleep; and now it might never have been. At this hour twenty-four hours ago I smelled her shoulder beneath my head, and my hand cupped the naked smoothness of her sleeping belly. Tonight she is cleansed of this and it's never really been. She prays there now—but can she forget a kiss in the small of her back? . . . Lips become dry and I wet them, exhausted. Turning, I listen and forget this bodiless emotion clutching a blackness of rosary beads back there near the door.

I've been one month now without my wife. That's a long time, eh? Only once have I had a woman, and that was because my friend the ambassador wanted me to go with him. We got two girls, good-looking girls, and I examined them. The one he had chosen was eaten up with syphilis, so he didn't get his after all. I managed mine all right, but it wasn't any good.

(Excerpt 30 from Page 154)

"Ah, you are drunk. Your Lucette's at this minute. Forgetting your weight beneath the weight of another."

"Good for her. I'm going to bed."

(Excerpt 31 from Page 166)

"I can't make you out, Doctor. One moment you're a mystic, in love with something intangible to the point of

being poetic, and the next moment you want to get me the worst old whore in the Valley."

(Excerpt 32 from Page 172)

'No, thank you, I don't drink,' or, 'I don't fool with women' (heaven help him), or, 'I don't smoke.' He's a paragon of virtue who's reduced to a nothing by the moral castration of pride—pride in the ability he has to stand alone and above poor bastards like us.

(Excerpt 33 from Page 173)

His voice falters, steadies itself, becomes another singing monotone as the author tells of the unwrinkled firmness of Salome's body and of the fullness of her milk-white breasts, intoxicating to both hand and mouth.

(Excerpt 34 from Page 186)

So I went directly toward the brothel. But this time I was accosted by a pretty girl in the street, and I accepted her quickly before anything could happen. We went into a hotel near the Bibliotheque nationale and got a room. She seemed very nice and I knew that nothing could happen this time to stop it.

First, however, she took all my money—every penny of it. When she had the money she took off her blouse and chemise, but to my horror her body from breast to hips was swathed in heavy tape. She told me she could not do it in the normal way. For some reason I cannot explain I burst into laughter—I roared with laughter. Here I had spent all my money, built up my hopes and my sins, and she destroyed my desire with her broken ribs and her unnatural suggestions. I asked her for my money back, but she refused to give me even car fare home.

(Excerpt 35 from Page 190)

"My friend, I'm without nerves. I've been out slutting all morning." He makes an easy gesture with his hand,

smiling, as if he'd just finished with a woman. We're both satiated with sanctity. Our beings cry for relaxation in the comfortable atmosphere of ribaldry.

"Was she a blonde?" I ask, carrying the upswing of good feelings. "A blonde with hair combed on top of her head, and a Parisian hat?" "Precisely. She was your friend from South Africa. Ah, and you ask me if I have nerves . . ."

"So, you forget your duties toward me to go after my women! And I thought you said you'd rather tie my shoelaces than be between the legs of the most beautiful woman in Paris?"

(Excerpt 36 from Page 191)

"There you are," he says. "Clean-shaven as an expensive whore." I run my fingers lightly over the raw skin. It is smooth and hardens uncomfortably beneath my touch. "I wouldn't know. I never went to an expensive whore."

"You don't know what you've missed," he grins. "But then I guess it's not too different from your cheap ones."

(Excerpt 37 from Page 194)

And in lower circles we adapt ourselves. We laugh at all that crap. We agree that niggers are just as happy as if they had good sense, and that they were a lot happier before people started putting ideas in their heads about

(Excerpt 38 from Page 195)

human rights. We agree that whoever happens to be president is either a son-of-a-bitch or a godsend. We laugh and admit it's not normal for a young man to be without his little ass every once in a while, and that the girls are just waiting to go out behind the barn with us. Or we stand upright and announce that this younger generation is wild as hell, that we weren't brought up that way.

(Excerpt 39 from Page 198)

I remember how I used to sneer at my friend Louis for

sharing his flat with a girl student.

"But it's the only way," he would explain. "No one in school away from home can afford much by himself. But if you can get a nice girl, together you can live well. Monique and I pool our money. She does the cooking and washing, we both do our studying, and we sleep together. It's the best possible arrangement, old man. Together we live twice as well and a lot cheaper.

"But Louis, how can you get any work done? Or do you neglect that part of it?"

"No, no, you don't understand. We're students, our studies come first. We don't fool around with each other till we go to bed, and then just once each night. And tock! we're happy and content. You must try it too. I'll ask Monique to find you someone."

(Excerpt 40 from Page 199)

She asked bluntly, "Tell me, are you a virgin?"

I hesitated, and a flush rose slowly to my cheeks. "No . . ."

She and Louis exchanged glances while I looked at the floor. With his laughter in the background she shook her finger mockingly in my face. "Why, you are," she cajoled. "Now tell me the truth."

"Well, all right." I smiled sheepishly. "Don't rub it in."

"Seriously," Monique went on gently, "you say you haven't been brought up that way. Well, neither have I and neither has Louis, and neither has this girl at school. But it's the only sensible thing, and it's worked for us. Now, let me bring her here to meet you. She just came to Paris a few months ago and she's never been with a man."

"All right, Monique," I acquiesced with a sigh. "May all my maiden aunts forgive me."

(Excerpt 41 from Page 200)

"Very well," she murmured hesitantly, "let's try it for a

while. I think we can get on together."

"Bravo!" shouted the irrespressible Louis. "We'll celebrate the nuptials. But first I'll tell you the rules. Remember you're both students, so studies come first. If you start making love three times a day your studies will be ruined. So you make love only once, and that's at night after all the work's been done."

"Oh, shut up, Louis," I laughed. "We'll work that out ourselves." We laughed easily, for there were four of us.

But the next morning, when we had finished moving into our flat and were alone together for the first time, there was a heavy timidity between us. I tried to overcome her doubts—which were also mine.

"Now look, Lucette, we're going to try living together. Neither of us has been around very much or had much experience. I'm willing to do whatever you like as long as I get my work done. If you want to make love I'm here; if not I won't bother you. It's bound to happen sooner or later because we're sleeping in the same bed. But I promise I won't do anything against your wishes.

"But I have no right to refuse you," she said. "After all, you're taking me in.

"No, I'm not. You don't owe me a thing. We're sharing the flat and the work, that's all. I think boys probably like this sort of arrangement better than girls do. That's the reason I don't want to do anything you wouldn't like. Shall we just let things work themselves out?"

"You're very nice," she said gratefully. "Yes, that would be best." And my own relief, unspoken, matched hers.

(Excerpt 42 from Page 201)

"She hasn't come in yet, she's still at school." We burst into laughter, shaking hands. "Ah, this is marvelous, Louis. I can never thank you enough."

"There's nothing like it, is there? Having your own

place, paying your own bills, doing your own shopping, and—"

"Having your own babies?"

"You haven't got to her already, have you?" he asked with concern.

"No, but look—I'm as dumb as anything about these things. What must I do to keep from getting a baby?"

"You dumb bastard, it's a good thing you asked." He reached in his pocket. "Here, take one of these and use it tonight. Tomorrow I'll get you some pills for her."

"You don't think she'll mind if I use this thing?"

"If she's as ignorant as you she won't even know it. Anyway it'll only be for one time. The pills are a lot better. Do you think things are going to be all right?"

"I don't know. She's awfully nice, but from the way she talks I don't think she's too anxious to go to bed with me. I promised not to touch her unless she wanted me to."

"Oh, no!" Louis moaned, holding his head. "A girl like her isn't going to come right out and ask you to do it. You've got to make the try, and then if she's not quite ready, why all right. One thing, though—a little advice. It might hurt her. If she acts like it's hurting her, just stop. That way the pain'll go away and she'll enjoy it."

(Excerpt 43 from Page 202)

Each scrupulously ignoring, but carefully watching, the other, we changed our outer clothing in the bedroom as nonchalantly as an old married couple. Our small talk was casual and full of delight. Without embarrassment she gathered up my shirt and pants and put them on a hanger in the wardrobe, murmuring something about washing them the next day.

(Excerpt 44 from Page 203)

"You know, my friend, I was just thinking," said Louis, serious in his role of confidant and adviser—"when did you last have a bath?"

"It's been over a week now. What do you do for a bath in the flat?"

"We bring a tub into the kitchen. But you can hardly do that in front of Lucette when you haven't even slept with her. It's very important, you know. She won't like it if you aren't clean and good-smelling. It'll spoil it for her." He stopped and turned to me. "Why don't we go to a public bath right now and get you cleaned up? Later on, when you've got used to each other, you can bathe in your kitchen."

"But I can't afford those public baths, Louis. You know that."

(Excerpt 45 from Page 204)

"Nonsense. It's only three francs, or two and a half if you get the shower. I tell you what: you go to that bath across the street and I'll get a cheaper bottle of wine. Here's two and a half francs. A shower will be good enough and it won't cost as much, but take a good one. Wash several times with plenty of hot water. I'll come for you when I find the wine."

At the entrance an old crone collected my money, complaining because I didn't have enough to tip her. When I had finished my shower I pounded on the door of the stall and she brought me a clean towel, suggesting that a youth of my obvious qualities should have a girl and she knew just the one. Laughing, I chased her out, telling her that if I couldn't have her I'd have none of her proteges.

Suddenly Louis asked thoughtfully, "Have you two kissed yet?"

"Not yet."

"Then you must do it right now. Go on, go on. I pronounce you man and mistress as of now. A nice kiss."

Later, for no apparent reason, Monique burst into laughter.

"What's so funny?" I asked her.

"I was thinking of our poor maiden aunts."

(Excerpt 46 from Page 205)

"Oh, no!"

Louis raised his glass. "To the maiden aunts," he proclaimed, and took a long swallow of wine. "Think of them," he went on, wiping his mouth. "They are, I imagine, warty and bulbous old things, at this moment asleep hugging much-battered water bottles. No, no, wait, let me think—that's no fitting desecration of maiden aunts. They're probably covered with stiff hairs in the wrong places." He turned to me. "When we're doctors, my friend, we must pledge each other we'll pluck out all the hairs from wrong places on warty old maiden aunts."

"Louis," Monique admonished, "you're impossible and unrefined. Why do I stay with such as you?"

"Because of the children, remember?"

"Oh, of course, because of the children we'll have one day. Did you know, Lucette, that Louis and I have decided we're in love? Yes, we'll throw away the pills one day and become respectable married people."

(Excerpt 47 from Page 206)

"Well"—I faked a yawn—"think I'll go on now. How long will you be?"

"At least two hours. You go on to sleep."

My cheeks were on fire. She didn't want it. She was studying late so that I'd be asleep when she came to bed. Controlling my disappointment and embarrassment, I murmured, "Tell me, Lucette, do you want me to stay awake and wait for you? I must know. If there's a chance I'll stay awake, but if you say no, I'll forget it and go on to sleep."

She didn't lower her eyes. "I'm awfully sorry. I have an assignment of drawings I've got to get in. What shall I do? Do you want me to wake you up when I come to bed? If you want me to I will."

(Excerpt 48 from Page 207)

Later, in the middle of the night, I awakened to hear her quiet breathing beside me. She was asleep, and we were in the dark, in the warm dark night of our new home. We were alone—two people breathing in a single smallness of surroundings with only the intimacy of our bed and our sleep-drugged bodies. And outside, all the city of Paris lived its nocturnal life in a million different ways. In the flat all was lost. There was no longer a living room and a kitchen. All was lost in darkness except what we could feel, except the immediate now of bed and covering and air. I lay there not touching her, happly to hear her even breathing, to know that beside me this living warmth of a stranger—a young girl with breasts and belly and knees and heart—was mine without my having yet possessed her; a stranger of whom I knew nothing but who was with me in the same bed, safe from the desolate loneliness of the world of humanity about us. We occupied our tiny space within the cellular framework of a great city. Others lived and slept and ate and wept above and below and on all sides; but we were there alone, hidden from them as they from us, with our own steams and pains and joys and inner liquidnesses.

I rolled against her in the dark. She allowed her body to relax in my arms. She did not turn nor pull away. She was warm. A warmth of sleeping flesh covered with night clothes, drugged by sleep, without thought or intention. The night was a vacuum permitting instincts to dissolve the counterpoint of background and timidity into pure feeling. Our arms found one another and we lay a long time face to face, with nothing but the softness of her breasts to give me consciouness. We slept again fitfully, automatically clasping each other against the unknown which lay beyond our bed in every direction. Finding delicious quenching safety in the embrace. Breathing pure smells of clean bed-

(Excerpt 49 from Page 208)

clothes and clean night clothes and tiny spots of bareness. Again we slept, and awoke twisted. The bed creaked as we straightened clothing with an understood union of movement, and settled once more into the sleep from which we hadn't really awakened. Comfortable, fitting close. Warmth of arms under arms, of legs between legs, of the nothingness of stomachs separated only by wrinkled cloth.

Gradually through the night—imperceptibly somehow, without beginnings—clothing which separated us was unbuttoned and pulled aside. In a dream, unconsciously, legs found their comfort. The wetness of too much covering formed where flesh heated against flesh. Lips touched lightly, growing stronger but never really strong. Hands fumbled with flimsy night things. In the dumbness of night the tension of these half-gestures grew. We tightened our clasp and soon were pressed side by side. There was a stabbing of liquid warmth. Nerves and muscles relaxed to become tense again. I knew the waiting, the inevitable seeking of man's insides to become woman's insides as the embrace brought us without touches into greater tightness . . . until we were united. Until there could be no more pressing of stomach to stomach. Until the fullness of one became the fullness of the other. Clasping with no need of movement, with an inner deliciousness of drunken newness that throbbed and was concentrated, that searched and was feverish. The brain descending from head in a giant curve, deserting head to take its place in a contracting belly. All lines of feeling leading into the darkness under covers. All life dying except the one consummated in an animal ecstasy of nerve against nerve, of nerve nourishing nerve, of nerve ravishing nerve. Till it could no longer be borne and nerve must assuage nerve with its heavy balm, its warming sedative of liquid gratefulness.

She pulled her head away, breathing heavily, and slowly her breathing returned to normal and her heart stopped

pounding against mine. We did not draw apart after it was over. We returned to the close plane of sleep from which we had strayed only a few emotions. Still clasped together, I remember murmuring, "Thank you," close to her ear, and feeling her head move against my mouth in wordless nod of acknowledgment. Later, perhaps only a moment later, a last fleeting thought that I'd forgotten to use the thing Louis had given me in the afternoon. But the thought held no worry. The brain was back in the head. My happiness was unblemished and complete.

(Excerpt 50 from Page 210)

"So you're happier here than you would be kissing the breasts of your Lucette? I don't believe you. Your piety is a milk-fed thing. It disgusts me a little."

(Excerpt 51 from Page 216)

"You won't have any servants?"

"No, there's only Madame Renee, and she's a high-born woman. I can hardly see her stooping down to pull up my underwear pants can you?"

"Not exactly, though I imagine it'd do her old heart more good than harm. You'd probably be hot as a poker."

"Not after that. She's got snow-white hair."

(Excerpt 52 from Page 217)

He laughs. "She'd be so grateful, and in the dark you'd never know the difference."

"I may come back in a week or so and see how you're settled. By then Madame Renee should be pregnant."

(Excerpt 53 from Page 232)

Sleeping alone on a whore's couch.

(Excerpt 54 from Page 239)

I hesitate, putting my hand on her arm. "Look, you can

trust me," I say slowly. "I know I shouldn't ask, but we're two of a kind, surrounded by uncongenial people. Now that I have my villa, why not come and see me? You could go into Town and let yourself be seen there, then return to my place late at night. We could have a couple of hours to sleep together and no one would ever know. I have a good fire, and we could—I mean—"

(Excerpt 55 from Page 288)

Reeling with repressed anger I lean against the door. "If it's any of your business," I mutter, "I'm going to Town and find a good, healthy, simple-minded peasant girl who'll sleep with me and make me forget what's happened. And what we do will seem clean compared to what you and I have just been through."

(Excerpt 56 from Page 290)

"Silly, it was Madame Marceaux. You've met her, haven't you?"

"I've seen her."

"I'm not too fond of her, but she did bring some amusing news. I'm sure you've heard of Salesky, the taxi driver? Well, there's a girl here, Madame Rouen, who's his mistress. She has a little spice shop."

"I've heard that. What about it?"

"We believe she's pregnant again. Poor thing, I feel half-sorry for her."

"Where's her husband?"

"Oh, he was a prisoner of war for several years, and during that time she bore Salesky two children. Of course when her husband came back and found out about it, he left her."

"Too bad." I light a cigarette and wait for her to go on.

"Well, the girl's been getting large again, but this time she denies she's pregnant. She claims it's a tumor and says she's going to the City to consult a doctor." She leans for-

ward eagerly "You won't believe this, but two or three days ago she said she was suffering and sent for Madame Marceaux. When Madame Marceaux got there Madame Rouen was in bed, and on the floor by the bed was a bloodstained cloth. Naturally Madame Marceaux asked about it. The girl explained she was menstruating, and pulled another bloody cloth from under the covers. She apologized to Madame Marceaux for being in such a condition, and begged her to get a young girl who works in the store to carry the rags out and burn them. She also asked for a clean cloth. By doing this, you see, she knew Madame Marceaux would be convinced of her innocence."

"And wasn't she?"

"She was until today. Now this will amuse you. Today an old hag—who's the mother of your domestic, by the way—this old hag was cleaning the store, and she found the half-burned carcass of a cat in the stove." Madame Renee laughs piggishly; she seems to think it excessively funny.

I play with a strand of tobacco hanging from my cigarette.

(Excerpt 57 from Page 291)

"And I suppose you good ladies pumped her for all the gory details."

"Of course not. I knew nothing about it till I saw Madame Marceaux this afternoon. But obviously Madame Rouen's pregnant. She planned it, don't you see? She killed the cat and soaked the rags with blood, then sent for one of our better-class women. She didn't realize how soon she'd be found out. Now it's all over the Village and the poor creature's in more disgrace than ever."

(Excerpt 58 from Page 292)

"Did you believe him?"

"Of course I believed him. I was from one of the great families, and he was only an artist. I loved to slip away from school to go visit his studio. That's how he took

advantage of me. But he did love me. And he was honest enough to divorce his wife and marry me."

(Excerpt 59 from Page 304)

"For almost two weeks I dress you every morning. Each time you crawl naked out of that bed without a sign of embarrassment in either of us, because it's something that has to be done. And yet this morning when I open the door and glimpse that same bare ass, I instinctively draw back in the hall till you cover yourself. And you feel the same thing, for you tell me to wait while you struggle to hide what I've already seen so many times."

(Excerpt 60 from Page 305)

"That's right. You and I've both slept with nice women, M'sieu, and seen and felt every part of their bodies. But have you ever tried to pat one of them on the behind the next day? Chances are she slapped you to heaven.

(Excerpt 61 from Page 306)

Look at M'sieu Gide—our greatest writer, and yet he'd like to see marriage between males made legal as it was in ancient times.

"No!" He grins through a cloud of smoke. "Well, now you can have some freedom. You can even get a nice girl in here to stay with you, eh? Maybe Madame Vincent's beginning to—"

"Not her!" I laugh. "She's like your nice modest lady. We're good enough friends, but that's all."

"Tell me, M'sieu—I'm not trying to get personal—but is the talk I've heard true? Did you really have an affair with her? Somehow I've never thought of her as being that type."

I smile: it's a question I would resent anywhere but in France.

"The talk's true, all right," I readily admit. "But she's

really a fine woman, better than most. And she's making amends, you know. She wouldn't let me touch her now."

(Excerpt 62 from Page 308)

"I hear she's been giving you a bad time. What's the matter, won't she let you have it? Or won't you let her have it? Which? She's a good looker for her age. I could tear up her—"

(Excerpt 63 from Page 309)

"My house is open to the public, but I don't want to come home and find the two of you together upstairs. You know I can't risk such things, much as I'd like to."

"All right, M'sieu," he says resignedly. "But I'll pass you an occasional pack of cigarettes. And say, do you need anything else?"

"Yes, but you ought to see him on a party. Now there's a man without a shred of modesty. There's nothing he won't try to do—and right there in front of you—to please the girl he's got. I think you're crazy not to let him find you a girl like he suggested—but that's your business, of course."

I shake my head. "I'm too tied up with the Monastery. Can't afford to take the chance . . . What's his wife like, by the way?"

"You'd get along fine with her. She's much too good for him and he knows it. He loves her and loves to show her off." He swallows the last of his coffee. "You know, you can't help but like Salesky even though his main reason for living seems to be below his waist."

(Excerpt 64 from Page 318)

"Come on, come on, out of bed! I've already lit your fire." Grinning she throws the blankets from my body, bursts into cackling at the sight. "Oops, why the young pup's naked! Ha! Come on, up with you!"—grabbing my ankle, jerking me over, slapping me hard on the behind.

I roar angrily, "Get out of here, old woman!" and try to cover myself, embarrassed and indignant.

She leans back, rocking on her heels with laughter, coarse, dark, laughing like a man. "What's the matter, hey? Ah, he hides himself, for example. Come by the fire. You got nothing to hide from old Mother Nourrie. I seen men lots bigger'n you, and lots uglier. Why, my Papa Nourrie—" She squints and moves her hands to show me how Papa Nourrie is made.

"All right, all right," I interrupt impatiently, "I didn't ask you for an estimate of my sleeping qualities."

(Excerpt 65 from Page 319)

"There, young turnip, and here's a chair. How come you sleep by yourself? Why, you're young and full of sap and you're a fine beauty of a thing."

"You're old, Mother Nourrie, anything would look good to you. Now leave me alone."

She grunts and tosses her shawl across my shoulders, a grinning, half-surprised expression on her cramped face.

"The blood runs good in you, sweet child. Ha! it does me good to see you. Stand up. No? In my day a man stood up for me. It's good to see youth even when you can't feel it any more." I tie my shoes. "You're pagan, old Mother."

"What?"

"Nothing. Hand me my underwear, will you?"

She retrieves my underclothes and examines them carefully, shaking her head slowly from side to side.

"What's wrong?"

"Ha! they're filthy."

"Here," I sigh, "I'll get some clean ones just to please your ignoble old heart."

She gazes at me, clasping her hands. Quickly I put on clean underclothes. She steps close to me, her face serious. "Tell me, fine boy," she says loudly, "you look good and

full and nice-sized, and your whiskers grow healthy and the behind is broad—are you sick?"

"No . . ."

"Then why do you keep a lonely bed? Why waste young muscles this way? It's sad—none of my business—but sad. You ought to be locked to somebody else. Ah, look at you! You got blood and your skin's rich and rosy. You'd be better letting another's hands know you."

"If you don't stop talking, miserable woman!" I tell her —but now I am laughing.

Standing back, she applauds. "Aha! the young garden begins to grow and bud and blossom. Good! Go, young beauty, the country's full of girls who smell of fresh straw. In winter they're green and warm like young plants. Leave this old hag and find them. Break their backs and fill them with children."

(Excerpt 66 from Page 322)

"Good-bye, Mother Nourrie, I'm going to the Monastery." She grins. "Bye-bye, sweetness, bye-bye, young fatness, bye-bye, nice thing, bye-bye Pinkness, bye-bye, prettiness, bye-bye, fresh garden, bye-bye—"

"Oh shut up, won't you?"—laughing.

(Excerpt 67 from Page 323)

She stands solid, hands on hips, glaring. "You tell me to shut up! Wasn't even talking to you."

"No? Then who were you talking to?"

"I was talking to your you-know-what, young boy. I was telling it bye-bye, sweetness, bye-bye, nice thing, bye-bye, prettiness—"

(Excerpt 68 from Page 326)

"That bitch!" exclaims Madame Chevissier spontaneously. "That dirty bitch!"

(Excerpt 69 from Page 365)

We sit alone in the car, very close, and our hands find themselves. There's little time. Placing her hand in my lap I lean against her, and murmur in her ear, "I need you, Marguerite. Won't you help me?"

She doesn't move her hand away. "But we have not time, no place."

"Here and now—I know you want it."

"I'm really a low woman at heart."

(Excerpt 70 from Page 366)

"Good! And we'll dedicate it to Madame Renee. May she inspire us to heights!"

Marguerite giggles as fondlings become excitement and spite.

"So," I whisper, "You think I'm just like her jean* Julien, eh? I'll fix you for that, my precious."

Salesky opens the front door noisily. We sit upright in the back seat, laughing.

"My friend," I tell him gaily, "drive around slowly for half an hour, will you?—and don't look back."

"Aha, M'sieu, as you say." The lecherous smirk on his face shines in the dark.

Wheels crunch slowly through the ice-crusted snow. Salesky whistles to himself. Headlights reflect upward from the rough white ground, upward into the frosty air of night. Lights from the Village fade as we drive into the country and other things more immediate occupy my consciousness: things immediate and warm—for Marguerite is crazed with the need—yet somehow detached. Inner clutchings and desires suddenly become superficial enjoyment of the moment. She bares her breasts. We each become sensations, but my mind can't descend the long curve; it stays in the head. It patiently notices the feel of leather-and-felt upholstery, it hears the tune Salesky whistles softly to himself, it waits half-laughing-and it's pleasant waiting. It's detached. It sees snow from the corner of

its eye and feels her hair beneath its cheek and breathes her breath—but it's not there. It waits, calm in frenzy, almost derisive with the growing of pleasure. It thinks of Madame Renee and grows derisive. It thinks of other waiting faces, dumb faces of people standing in line at the bread shop, each waiting his turn to exchange ration tickets for bread. It's that kind of waiting, waiting on floatings and coarse facial pores and liquidness beneath the mouth. Warmth without heat, heat without burning. Calculated waiting in line with a dumb face and an occasional sigh and a cringing from frenzy. The brain refuses to leave the head. Hands draw the bundle closer beneath and, instead of the flesh, feel the roughness of car seat against wrists. Time passes with thought suspended as we take one step, and then another, nearer the end of the line. And there's finally the ultimate in warmth of breathing against cheek, in sounds of lips and wetness on face, and it's a moment not of concentration but of many things. It's the dumb face's turn now, the exchange of its ration tickets. Leather upholstery squeaking and shoes scraping against the rubber floor-mat and Salesky whistling louder for a moment above the rasping rattles of passion.

(Excerpt 71 from Page 367)

The pressure of drawing closer than close as a reflex, and the waiting to leave. We settle quietly till the gesture of straightening wrinkled clothing gives me permission to go, to move away with a final pat of basic politeness. The arranging of things. The brain settling comfortably and looking out the window, and the one helping the other with hands pulling on clothes and fastening buttons and absent-mindedly dusting wrinkles. The wheels of the car in the snow, and darkness beyond the clear cone of strong headlights. Salesky coughs. I cough in answer and he turns to stare.

"All right, M'sieu?" His voice is saccharine with mock-

ing respect.

"Yes. Take us to the station now."

(Excerpt 72 from Page 382)

Other things become clear. Only now do I understand why Dr. Castelar wished to take me to the worst whore he could find, for I should like to do the same thing with this Michel—to kill the rottenness of his goodness with the health, the humiliation of disgust. But he'd probably try to convert the whore.

(Excerpt 73 from Page 399)

Again it's daylight, and I am plagued with hunger as wakefulness returns. Voices, instantly recognizable as the circle of old ladies.

"Ah, he's awake. And how does M'sieu feel now?" asks the nameless woman who buttoned me.

"I'm fine," I reply, "thanks to the wonderful care of you good ladies." I glance about the room. "Where is the Sister, the nun?"

"But, child," Mother Nourrie says, as she approaches my bed. "You were so mean to her, she left. And right, too. She had no business here. I told her old Mother Nourrie was more used to you." She chuckles. "You spoke some fine French—good outhouse French. This was no place for her."

"But what day is this?" I ask, worried. "And how was I mean to her? What did I say?"

"Damn! This is Wednesday, child. You've been gone to God for four days. As for that slit-tailed monk, you were rich. Such a tongue! Ha, and you tried to comb her hair."

The old ladies laugh thoughtfully.

"Zut!" Mother Nourrie goes on. "Don't feel bad. Slit-tails shouldn't be running around loose like that."

"I tried to comb her hair?" I inquire frowning.

They become hysterical with laughter. Mother Nourrie's eyes stare at her nose as she slaps herself on the leg. "Sure, You don't know what that means, poor thing. I guess they've got it the same as you and me. You tried to get under her robe." I listen horrified. "What?"

"That's right, you tried to get under her robe." The old women, led by Mother Nourrie, laugh harder than ever. I look around at them.

(Excerpt 74 from Page 412)

Snorting, smirking, she asks, "Incidentally, were there any pretty nurses in the hospital?"

"All of them were beautiful," I tell her seriously, "And I violated each one of them twice. Does that satisfy your curiosity?"

(Excerpt 75 from Page 441)

"Why, a doctor friend of mine even suggested that if there's any further delay, we go ahead and have physical contact before marriage. What do you think?"

(Excerpt 76 from Page 442)

"And tell me, do you think maybe I should try to keep her satisfied in the meantime? I've never had any sexual experience, I'm just asking you."

(Excerpt 77 from Page 466)

The delight of Mademoiselle Marthe's talk fills me with a newness of sensation: delight in thinking of someone fresh and young, and of a house and a bed and a permanency of clear marriage. Tremblings of excitement, and the sudden rush of a turbulent past: turbulent past when a woman meant nothing more than a quick cleverness of speech and the arousal of verbal advances, with a triumph consummated only in the sex act.

(Excerpt 78 from Page 474)

"Is everything all right now?" she whispers intimately.

"Did you have enough supper?"

I stare at her and remember almost the same words spoken in the same voice, with the same intonation and the same whisper, when a whore once asked me, "Was that all right?" They are the same, these voices and these words, repeated under not-so-different circumstances; and there's the same questioning on the face, knowing that I'll answer yes as the whore knew that I'd answer yes. The parallel is too complete. Instinctively I pull away from her, preferring the whore.

(Excerpt 79 from Page 478)

She whispers, "I prayed for you this morning, my poor friend. I—I simply don't know. O God, I hope she's not really—pregnant." The word shimmers like a sudden chill through my body: Pregnant. Pregnant. Pregnant.

"She's little more than a whore, that one," says Madame Renee with sudden anger. "Just like her to refuse an operation. Well, I'll help you. I can think of something to drive her away."

"No, no!" and my voice is chokingly dry in my throat. "It can't be. She's a fine woman. It just can't be."

"I hope not," she says distractedly. "But why else would she come back here? We must find out."

"I can't believe it's that. Madame Vincent wouldn't have come back if it were. She'd have written."

"You're so foolish!" Madame Renee says intensely. "She's a whore, I tell you. She's responsible. I hope this teaches you a lesson."

(Excerpt 80 from Page 479)

My head turns and I fall into a chair. I feel a moment's exultation that my flesh is in the flesh of another's belly—but it's drowned in her age and in threatened disgrace.

(Excerpt 81 from Page 480 and 482)

Two young men, comrades, sit down at the next table. They order beer and talk—decent, sincere talk about the lamentable lack of girls in the Town. They are home for a vacation between semesters at school. I listen to them. They worry. They confide in each other as do two people with the same disease—the need of a girl to sleep with. One of them concludes by leaning back in his chair, and smiling sadly, and saying that he really doesn't know what he'll do if something doesn't turn up soon.

"She's a fine woman, you know. I hope the bitches will leave her in peace this time."

(Excerpt 82 from Page 485)

Pursing her lips she makes another laughing sound. Intimate, secret. Bends down to look at me more closely, casually putting a heavy hand on my stomach. "Now I know you're drunk, my friend," she chides. "But don't worry, no one else will ever know." Her hand pats my stomach, feels its outline like you feel a tomato to see if it's ripe. Pressing, releasing, heavy. Going lower.

"Sure I can't get you anything?"

"Nothing," I tell her. Hand on my belly. Hand feeling. Grinning hand and headache lost in pulsing.

Her face bends closer to mine, next to mine. I can smell her breathing and feel it. Skin, pores of skin. And thin gray hair floating in the air near my eye, catching highlights from the lamp. Her face shades mine. Warmth from her. My eyes lower, see the creases of her nose, fine particles of face powder. Hand on my belly and belly moving beneath her answering caress. She makes an intimate sound—small gust of warm air on my cheek. A hair, one fine thin gray hair floating there near my eye. Body in white dress somewhere there above me, near me. And legs, mortal thighs, wide thighs hidden but there somewhere. Face nearer mine. Belly moving under her grasping hand. Heavy hand. My arms go up clumsy, pulling

at her body there somewhere, feeling for it. Without opening, lips move against face pores. Spot on the ceiling above her. Eyes turn back to floating hair caught in lamplight. Hands feeling backs of legs. Feeling detached deepness of skin and fats that move. Fingers sinking in, moving up. Two frozen bodies together, waiting for hands to move up to thighs and hips. Hands moving, eyes closed. Softness of flesh changes to rough hard corset staves under white dress. Two frozen bodies. Hesitation of feeling. Again the fumblings. Hinted cringing as mouth opens to taste face, and softness of lips finds fine wrinkles of cheek. Hinted cringing as momentum builds. Her hands moving down on my belly and my hands moving up to feel hardness of covered breasts. Momentum, and her hands touch lowest belly beneath covers. Touch, feel a moment—and it flashes. Light flashes in my eyes as her hands are jerked away, as fine floating hair disappears. As body in white dress becomes motion of brutal tearing-away, as heavy hand slaps hard against my face, and slaps again. Turning of face with the slap. Confusion of spot on the ceiling now that her face is gone. Confused blinking to see the room clearly. She stands there high. Red swollen face. Accusing immobility. I rub my cheek and mouth where the hand struck. And I look at her there. I think of the stiff corset, the hard-packed breasts. I look at her outrage and laugh, and laughter grows uncontrollable. She turns to go, her fine gray hair being arranged with heavy, trembling hands back into a knot of convention atop her head. My voice

(Excerpt 83 from Page 487)

brakes her steps to a moment's pause. "So you're like that?" it taunts. "Lead a man on—"

Madame Renee's slap has disorganized my nerves, and her old woman's caress of my belly has filled me with loathing—and with a desire to consummate my excitement in a young girl. Thoughts of Christianne, of the way she moves,

of how she would be. I walk about my room. Thoughts become obsession, thoughts of all the women who have insinuated themselves into my life here—Madame Renee, Madame Vincent, Mademoiselle Marthe—and the dreams of Christianne which fight the dreams of an obscurely lighted chapel and of an unknown girl whom I could know in marriage.

(Excerpt 84 from Page 489)

The old woman leans her driveling wine-red lips near my ear. "And she's a fiery little bitch. From my side of the family. We got good blood on my side of the family. You look pale tonight—why don't you dance with her? She'll make your stove warm proper." She leans back cackling, nudging me in the ribs. I say nothing, and she cups her hands around her mouth and shouts,

"Hey, Christianne! Come over here!"

(Excerpt 85 from Page 490)

We dance farther off into the dark. And we move together, fitting close at belly and thigh-straining, torturing animal movements. The saxophone rises in a crescendo that echoes through the dark narrow tunnel of the street. I bend my face down and my lips become wet against her shoulder. She throws back her head, laughing, and we stop dancing. She is full of devil odors and laughter and it's an easy thing. Her hair falls to the back, away from her face. My lips kiss her under the chin and down the long throat, feeling the smoothness of young flesh. They kiss still lower, into the cut of her dress between her breasts, feeling the crease of her large breasts. Smells from under the dress: smells of sweat and lively odors of exercise. Smells of rutting youngness—rich, animal, intoxicating—tearing me with tremblings. I fondle and fumble and kiss, inhaling risings from her dress. She reaches down, laughing, puts her hand under my chin and lifts my face to hers.

We begin dancing again. Slowness of dance, violent shaking and violent music. Other odors return, odors of the beginnings of greenery from the pastures about us—waking smells of dampness in the warming earth. We dance a torment of closeness, pressed against a flimsiness of clothing. The sky hangs low, forbidding, and she heats in my arms. She smiles, looking up into my drawn face, and her smile is smells, too—smells of garlic and wine and food digesting below, of white teeth and wetness of inner mouth. I bend down, inhaling these odors, and all about is the burgeoning heaviness of first greens, of earth coming alive after its long sleep. Damp night-odors of earth's rumblings. Thigh straining against thigh. We dance with both arms clasped about each other, arms going lower and lower, pressing lower parts together. The music stops again. Laughing shouts float down the street to us. We don't even think of going back. We continue dancing. And in the dancing, lips find lips, open mouth finds open mouth and inside of mouth, as mouth shakes against mouth laughing and caressing till it engulfs us with its eye-closed dizziness and nose feels warm exhalation from the nose beneath. We stand still. Lips grow rigid. Laughing stops as the hardness of our kiss creates a vacuum of the senses.

A first drop of rain, followed by other scattered drops. A shout of despair from the other dancers. We separate lips and to tongues with a noisy wetness. I walk her into the nearest doorway. The rain is light. We stand side by side without speaking until she mutters, "It's blowing on my—I'm getting wet."

"So am I," I laugh. "Here, let me stand in front of you." Rain falls lightly, wetting the cobblestones. It's a fine mist fogging the streets, catching the reds and greens and oranges of the dance lights. I stand in front of her, against her, protecting her from the rain. Our arms are around each other, and her face is cool with the mist. Noises of water dripping from the eaves about us, and sounds of the

River, fill a music-emptied Valley with a flood of moving sound. I stand close to her, clasping her, bending to kiss her eyes, and the rain blows on my back, on my neck and ears. It drips from the roof above, dripping onto my back, wetting my coat and pants. I ignore the coldness of the rain and lean hard against her, pressing her to the locked door behind which someone sleeps never suspecting. Time and rain and wetness fade. Lips drink of lips. My hands find buttons and undo them, feeling inside. My hands fondle her lightly, a caress to the nakedness of her back and belly and breasts. She trembles violently as blood pounds into the kiss of our joined mouths, as intimacy becomes complete and movements attune themselves to the night and the deserted wet street. I reach up to remove the dress from her shoulders, but her hand against my hand forbids, asks mine to wait.

"Here comes a car," she whispers against my ear. "Don't let them see me."

I stand against her to hide her from the street. The car moves past in a humming of tires on wet pavement, and pulls to a stop. Christianne trembles from the interruption, and rain falls more rapidly. I feel my way into her dress again, but she peers out and whispers, "Why, it's stopped at your house."

(Excerpt 86 from Page 492)

"It has?" I turn and look. The taillights glisten redly through the falling rain. And coming from the dark, illuminated in the glare of the headlights, a woman walks rapidly—a glimpse is all, as she gets into the car.

Christianne stares and mutters, "Why, isn't that your lady from Paris?"

"Yes. This may be important. Wait for me here, won't you? I must see her."

"Ah, no—you leave me for her!"

"No, no," I tell her, kissing her hurriedly, "I leave you

for no one. But I must see her."

The exhaust from the car smokes its acceleration and I leave Christianne unbuttoned, dashing and sliding over the slippery walk, calling for the car to wait.

(Excerpt 87 from Page 493)

"Where'd you go, child? Wouldn't my Christianne be nice to you? I'll tell her a thing or two!" She stands close to me, her face serious, concerned.

"It was my fault, old Mother, not hers. She was fine. Where is she now?

"Just danced off down the street with young Edouard, the sculptor's son. Did she leave you? I'll go get the young slut."

"No, let her go, I'm too tired. But will she be all right, do you think? Will he finish what I started?"

The old hag stares at me, shaking her head. "You look bad, M'sieu. Couldn't you make it go? Should be plenty able from what I've seen. I'm surprised, but I know how it won't go sometimes when you want it to. Try eating boiled celery, they say that helps."

I pat her arm. "It's nothing like that, old Mother. We were interrupted. Something has happened. It's nothing like that."

"Damn! I'm glad to know it. Don't you want me to go for her?"

(Excerpt 88 from Page 511)

She stares up at me. "Why didn't you tell me you were at the dance last night? Madame Marceaux said you danced with Christianne with a servant girl!"

I laugh. "Madame Marceaux's a bitter old woman: she needs to be violated by an enormous man. Sure, I danced with Christianne. It was a public dance. And if you want to know the rest, Mother Confessor, I played with her too."

"Oh, no," she moans.

"Don't act so surprised. Both you and Madame Marceaux think it went further than that—and it would have, only we were interrupted. It rained on us."

"Ha, that's good. So your world can be ruined by the indiscretion of the buttons on my pants.

(Excerpt 89 from Page 514)

"Drunk enough," he grins, "to . . . uh . . . go after Christianne, from what I hear."

"You don't have to be drunk," I mutter, "to do that. Been wanting her a long time."

He squints at me through the smoke of his cigarette, and asks seriously, "How was she, M'sieu? I've always wondered about that one."

"Lord!" I groan, shaking my head appreciatively. "A little animal. I nearly went crazy."

"That good, eh?"

"You can't imagine—she's made for it." His usual cynical grin is replaced, momentarily, by an expression of benevolent warmth. "I'm glad. Now you'll have her regularly." "I doubt it. You knew I didn't finish. I only paved the way for Edouard."

"No!" He stares at me. "I knew she was with Edouard too, but I just supposed—"

"I was called away before finishing the job. When I went back she was off in the dark somewhere with him."

"Anyone who'd just walk off and leave something like that . . ." He shakes his head unbelievingly.

"You're right. But I was worried sick about Madame Vincent that night. I was afraid she was pregnant, you know—but I found out she's not."

"Well, I'm glad to hear that, M'sieu. Glad for you," he adds absently, still shaking his head. "You just walked away from Christianne? Left her there?"

"Unbuttoned," I say gravely. I hand him my cigarette to put out. "You think my fooling around with her did

me much harm with the gossips?"

"No," he snorts, "probably helped. From what I hear, some of them were beginning to wonder if M'sieu weren't maybe hung like a dove."

"If I wasn't what? You mean . . . Why, they should've known from Madame Vincent it wasn't that."

"Still, it's hard to say. They don't think it's natural for a young man to live like this—in a cage, so to speak, cooped up with an old woman. Has she got to you yet?—not that it's any of my business."

"Not yet, but she—" I hesitate, then decide to say nothing more.

(Excerpt 90 from Page 518)

"No damn it," I admit. "Michel wrote me too. All right, so he's an idiot and so he's getting married. Good riddance!" She lifts her eyes to the ceiling. "O God! God damn him; God damn his soul for doing this to me! I'll stop it! He can't do it."

(Excerpt 91 from Page 519)

"God deliver me!" I laugh brutally. "Virginity in a woman is a messy business. Be thankful someone else has already bled her."

(Excerpt 92 from Page 529)

I crumple the paper and throw it in the direction of the stove. The bitch! The damned peeping bitch! But—perhaps I'm wrong.

(Excerpt 93 from Page 530)

Perhaps I kicked the covers off. The room was warm when I woke up. I could have kicked them off.

I think of the prayers I muttered yesterday. They're destroyed today—destroyed as though they'd never been—by the memory of an old woman cradling my feet in her

belly, perhaps pulling back covers to gaze at my sleeping nakedness . . .

(Excerpt 94 from Page 533)

"Nothing. You know I'm happy to have your company, but I've got to keep my privacy. You understand. What if somebody had walked in here this morning and found us together—with me naked? . . ."

"What?" she asks expressionlessly.

"Well, how would it look? What would you think if—?"

"Why, you nasty-mouthed—" Her voice is loud and thick.

"It's the truth, isn't it?" I blurt out. "At least I don't go around peeking at naked old women. I don't—"

A hopeless broken laugh interrupts me. She raises her head, her eyes question insultingly. "You don't?"

"Hell, no!"

"Of course not," she says sweetly, "you're an angel. You prefer tickling their stomachs with your toes, don't you?"

"Well, I'll be damned!" I clamp my teeth together, thoughts tumbling in confusion. I stare at her. "I think you owe me an apology, Madame. I can't—Ah, the hell with it." I let the words die in a tired, dull voice.

She snorts, "I don't apologize to kids," looking away, shrugging her shoulders.

(Excerpt 95 from Page 534)

She smiles again, uncertainly, and draws back a step. Angrily I reach for the doorknob to shut her out, but she won't move and the door strikes her left shoulder. As I walk away she steps back into the room; she is holding a handful of her left breast, the breast large and cupped in her hand as a lover might hold it.

"You closed the door on my breast," she whines. "You hurt my breast."

The sight of her standing there, grimacing from the imagined pain in her breast, pressing it, squeezing it, pulling

down her bodice as though to show me, is more than I can bear. I burst into laughter. "Ah, what a brute I am!" (The insult causes her face to glow with sudden dignity.) "The door didn't touch your breast and you know it. Now, if you want to expose yourself, do it—but for God's sake stop playing with that thing and leave me alone."

(Excerpt 96 from Page 538)

Her craving for intimacy. The touches. Her breast. Thoughts wander into speculation. I place a bare patch of flesh at her disposal and it buys—what? Michel's happiness? I become a whore, then. No, it's not possible . . . but yet, curiously, it's like the whore's "Pssst!"

She bites her lip pensively, reddening, and closing her eyes she nods that it is—"A little." Her hand begins fondling the breast again, as pleasure bloats her face.

"Hell!" escapes me and I turn away from the sight of her, sick. Catching myself, I'm about to apologize when she lifts herself out of her chair and comes quickly to my side.

"No," she soothes, "you mustn't blame yourself so." Her hand is heavy on my shoulder. "If I'd known you were going to be so upset about it I'd never have mentioned it." She gives me a gentle little shove and laughs warmly. Reaching down, she takes my hand in hers. "Isn't there a little knot—there?"

(Excerpt 97 from Page 539)

A shudder of repulsion as she guides my hand into probing softness. "Believe there is," I mumble, struggling against the desire to tear my hand away.

"Listen, stop worrying," she murmurs close to my ear. "It's probably nothing serious."

Her stomach beside me. I'm aware of it as something naked and cavernous. Sensations of a whore. A coin for a caress, submitting to the caress, killing the desire to draw

away until the desire flames out and there's only the belly dragging against you. A cheap coin—the price of legitimizing Michel's venereal fevers—cheap. It buys my whorish slaverings and come-ons, my harlot sincerity and warmth.

"Don't feel so bad about it," she goes on, her face brushing against mine. "It doesn't hurt so much now."

I submit, not moving, closing my eyes and seeing her, seeing her swollen into a gigantic serpentine voluptuousness. A vision of strong legs, deep navels, bursting milk-white breasts—insatiable, grasping, choking triangles of pubick grayness before my eyes. Begging to be possessed, wavering slow undulation deep within me, suffocating me. Lost. Irritation of being lost. Touching the table hardness with my hands, fighting the vision. Concentrating against it and carrying it forward, letting it escape into the fog of dreams and desires. Hunger mixing with the deep-etched circular lines inside a woman's navel. I am walking slowly in the navel, on the tiny trails that spiral inside the canyon, looking up, sight-seeing, walking and looking about. Hunger for the taste of maggot-ridden carrion. Veiled redness, glistening. Tremulous building into—

(Excerpt 98 from Page 564)

"I'm so sorry," she says in a cracked voice. "I know you. You've needed me and I've failed you. That's what makes you so nervous." Her hand touches the back of my neck, fondles around to my cheek. "Remember the night you got drunk? You wanted me then." A sob breaks her voice. "If—if you'd just be nice to me . . ."

I feel her breath against my face. I sit stunned as her cheek brushes against mine. Unconsciously I arch my head away, but the tingling juncture creates in me a suppressed excitement as hinted animal tangents converge into focused desire. The body knows the possibilities and begins to savor them far in advance of consent. I sit motionless,

remembering feelings—the catching of the breath, the flooding of warmth when a whore hisses, when a street girl glances, when body becomes aware of body and stirs its own compulsions. No. I recoil, but muscles and nerves become hypnotized. A faint odor of face powder, musky, stirs my intestines with simultaneous loathing and desire. The aunting possibility—the offer of her body to my body, of her nerves to my nerves in brute slakings of inverse pleasure—is irresistibly compelling. I feel her hand prowling across my chest, warm and full. A suffocated exhalation rasps loudly from her as her fingers grasp hungrily at my chest and, with a circular motion, caress a wide . . . All feelings, all emotions center in the soft warmth of possibilities contained in her body beside me in suspense while her strong fingers unbuckle my belt and crawl stealthily searching . . . until clothing is no longer a wall and flesh touches living flesh to stimulate engulfing desire. A battery of sensuality is exploded into my belly. Her lips against my face. Through slitted eyes I look downward.

(Excerpt 99 from Page 565)

The black wool sleeve, disappearing beneath cloth, weaves gently. I hold my breath painfully. For a drunken moment my sight is caught by the glistening stain of coagulated sugar where the preserves were dropped on her sleeve. Her lips trail a pattern of sensation across my cheek and I turn to meet them closing my eyes. A whimpering sob escapes her as our mouths join and move liquidly, hungrily against each other. Shock as her mouth exudes its warmth onto mine. I struggle to my feet, my legs shaking so that I can scarcely support my weight. I gasp as she withdraws her hand. Her arms snake their way beneath my armpits. We stand pressed together, hands and mouths and groins searching living tumescence.

But passion falters with a caught breath. A thought bolts through my consciousness—a faint protesting plea

that warns me of the moment, begs me to break away. Formless plea, vague and meaningless. She rubs against me. She is like a bitch in heat dragging me into her, and tensions build hopelessly against the plea. The plea is a fleck, an irritation flecking mucous union, as groins and bellies become united in overwhelming thirst. Her arms tentacle-like, tighten around me and we float in feverish embrace as the plea sends words tracing themselves in dreamy sequence, like a curl of smoke, through a faraway consciousness. Mary conceived without . . . I lean back against the table, rejecting the flecked words, and pull her full against me, my hands beneath her buttocks grasping the whale softness . . . sin, pray for . . . Vision alternates with blindness. Suddenly I see a throbbing heartbeat in the hollow of her scarlet throat, then blackness as hands seek intimacy and lips suck lips in hyena laughter. She arches forward, maneuvering until her legs frame my thighs . . . pray for us who have . . . The grit, the irritating grit of pleas, like sand against tender inner flesh. The plea begging me, pumping words against the diaphragm of my craving. Now or never, now or never. Destruction. I feel her hands grasp my head and lower it inexorably to her throat. I taste the flesh and feel her swallowing muscles beneath my lips. Mary, conceived without sin, pray . . . Her belly twists with pleasure in a gigantic serpentine

(Excerpt 100 from Page 566)

voluptuousness, tossing me into a full dream of carnality. But somewhere in the back of my mind, clogged with screaming desire for her, the resisting plea flickers, hesitates, blinks out, pulsates to the fore as bloods pound out visions of strong legs, of distorted buttocks, of insatiable, slavering vaginas. Lost. I lift her higher over me as her hands force my head downward into the opening of her dress. The hard edge of the table bites into my haunches . . . without sin . . . The two images—nakedness full of rich

odors struggling against the dim image of words, blotted and blinded. All things—the past, the hopes—combine into ambivalence attracting, opposing, striving as all futures and all times become the moment. My hand finds her most intimate warmth and burns with pleasure. The will like an inflexible pole, the will tall and phallic—and something beyond me seeking to bend the will, to change its course for the first time, for the very first time in my life. Mary . . . inner sobbing . . . conceived without sin . . . forcing the words against all desire . . . pray for us who have recourse to thee. Bending the will, distorting the will —until the rack becomes insane and the soul bursts into weeping. Words die in suffocation as a slow undulation knots the entrails with her bitch cravings. I feel her knuckles hard against my chin as she opens her dress. With the other hand she pushes my mouth against the upward slant of her exposed breast, my lips clutching. Concentrating, concentrating, not letting it die . . . without sin, pray for us . . . like the faded print of an old newspaper, yellowed, mixed with the reek of my saliva on her breast as my mouth is guided hopelessly toward the goal, the detested goal, the nipple. Muscles in my neck resist. The dread of arriving at the prune nipple. Aged flesh, used, but fresh eternally in Great exhaustion from struggling against the faded print that now dominates my inner vision. Shaking my head against the lustful snare. Eyes glimpse blue veins beneath transparent white skin, saliva-streaked, saliva-stenched. Mary . . . pleading, begging as the nippled

(Excerpt 101 from Page 567)

goal draws near. Mary . . . and the hard warm shriveled bulb against the corner of my mouth. Fighting back the choking rise of vomit, as muscles tense rigid and all concentration divides between the dreaded goal and the words pulsating clearer. Mary, conceived without sin . . . And the faded print is suffused slowly with luminous black, and

the old newspaper, yellowed, becomes atmosphere shimmering behind words, destroying the other image as I feel the nipple bending to enter my mouth and my mouth rejecting it in a convulsive wrenching as the screeching howling rasping whiteness slithers away to sudden nothingness. I shove her away and stare open-eyed. The room swims wildly. I see her congested face, the exposed breast glistening. Without opening her eyes she flows toward me, arms outstretched. Slowly, dazedly, I lift my arm high in the air and bring my fist smashing down into her face. She crumples to the floor. Dimly I see tiles coming up to meet me as blood-mists float across my eyes. I catch myself against the table, weaving, trying to focus on the whispered Mary, conceived without sin, pray for us . . . And far in the distance, out of space, confusions and sicknesses gyrate around the one exultant nucleus; For the first time. For the very first time.

Madame Renee, wallowing on the floor, is wrenched with sobs. Slowly, I lower trembling hands to my belt, and stuffing in my shirt tail I buckle my pants. Reeling senses seek their level in the tear-mulched silence. In my legs there's no strength left to support me. I lower myself in the chair and let my head fall forward on the table, inundated with gratitude for the insistent phrase: For the very first time—abandoning myself to it—For the very first time. I am filled with the gentle, floating pain of unbearable relief.

A scuffing sound attracts my attention. I open my eyes and look downward. The table angle gives a triangular view of the floor. Absently I watch, seeing only her sturdy black shoes and the hem of her dress as she gets to her feet. I watch the shoes turn sideways, hesitate, then disappear beyond my range of vision.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~548~~ 16

ALFRED E. BUTLER,

Appellant,

against

STATE OF MICHIGAN,

Appellee.

BRIEF OF AMERICAN BOOK PUBLISHERS COUNCIL, INC., AS AMICUS CURIAE IN SUPPORT OF THE NOTING OF PROBABLE JURISDICTION AND OF APPELLANT'S POSITION AS TO THE UNCONSTITUTIONALITY OF THE MICHIGAN STATUTE INVOLVED

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Interest of American Book Publishers Council, Inc.

The American Book Publishers Council, Inc. is a membership corporation of which most of the leading publishers of books of general circulation and leading university presses are members. It is estimated that the 132 members of the Council publish and distribute not less than 90% of all general books. Among these publishers are Doubleday & Company, The Macmillan Company, McGraw-Hill Book Company, Inc., Charles Scribner's Sons, Harper & Brothers, Grosset & Dunlap, Inc., Little Brown & Co., Random House,

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* Submitted on consent of the parties.

Inc., The Viking Press and Alfred A. Knopf, Inc.; among the university presses are those of Cornell, Columbia, Harvard, Yale, Princeton, North Carolina, Minnesota, Oklahoma, California and Stanford.

We should like to make crystal clear that the members of the American Book Publishers Council, Inc. deplore obscenity and do not oppose legislation seeking to proscribe it, provided constitutional guaranties are not thereby violated. By the very nature of their business, they have a unique interest in the preservation of freedom of the press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. Therefore, the Council feels impelled to urge that the statute here involved constitutes an unwarranted abridgment of the constitutional guaranty of freedom of the press. For this reason it is respectfully urged that probable jurisdiction be noted * and that the statute be held invalid.

The Michigan Statute Here Under Consideration

> "Any person who shall import, print, publish, sell, possess with the intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious language, or obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive or have in his possession, any such book, pamphlet, magazine, newspaper, writ-

* It is to be noted that appellee consented to appellant's application for leave to appeal to the Michigan Supreme Court on the ground that "the issues involved in this case are of great public interest," and that a "clarification of the language of" the statute was "necessary."

ing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor." (Sec. 28.575, Michigan Statutes Annotated [Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953].)

Issues on This Appeal

The American Book Publishers Council, Inc. submits that the Michigan statute involved on this appeal presents an unconstitutional violation of the rights guaranteed by the First and Fourteenth Amendments in that:

(A) It unduly restricts freedom of the press, since even though a book *as a whole* may not be obscene, it renders publication criminally actionable if the book merely *contains* any proscribed language;

(B) It fails to comply with the constitutional requirement that criminal statutes set forth ascertainable and definite standards of conduct therein proscribed; and

(C) Although the statute is clearly aimed at the protection of our youth and the alleged standard which it adopts is limited to the effect on youth, its criminal sanctions apply indiscriminately even though no young person be involved.

Argument

A.

The statute proscribes all publications *containing* obscene language such as tend "to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth". Obviously, under such wording the inclusion of *any* such proscribed language in a publication would be sufficient to impose criminal liability,

even though the publication, judged as a whole, might not be considered obscene.

Although this Court has not heretofore considered the precise problem here presented, various of our State and Federal courts as well as other authorities, have held that such a provision constitutes an unconstitutional infringement upon freedom of the press. Thus, in *State* v. *Lerner* (Ohio C. P. 1948), 81 N. E. 2d 282, the Court of Common Pleas of Ohio dealt with precisely the type of statutory provisions here involved. There the law was directed at any "book, pamphlet, paper, magazine not wholly obscene but *containing* lewd or lascivious articles, advertisements, photographs, or drawing, representation, figure, image, cast, instrument or article of an indecent or immoral nature * * *." The Court, referring to *containing* statutes or statutes prohibiting *any* obscenity, declared such provisions to be violative of the constitutional guaranty of freedom of the press, stating:

> "* * * these 'obscene literature' statutes constitute an invalid exercise of the police powers and trespass beyond all reason in the field reserved for the press." (p. 288).
>
> (See also *New American Library* v. *Allen* (D. C., N. D. Ohio, E. D. 1953), 114 F. Supp. 823, 830-831.)

The Court in the *Lerner* case was led to its conclusion from its acceptance of the rule that the word "obscenity" in "obscenity" statutes must be construed as requiring that the book be viewed as a whole and held to be obscene only when such obscenity is the "dominant feature or effect". Thus, the Court stated (p. 287):

> "My conclusion is that an 'obscene book' must be held to be one 'wholly obscene' and that necessarily in testing a literary work for 'obscenity' it must be viewed in its entirety and only when and if the 'obscene' contents constitute the dominant feature or effect does it fall within the forbidden class."

The weight of recent decisions is completely in line with this holding. Thus, in *United States* v. *One Book Entitled Ulysses* (C. C. A. 2d 1934), 72 F. 2d 705, 707, Judge Augustus N. Hand made it clear that

> "The question in each case is whether a publication taken as a whole has a libidinous effect."

Similarly, in *Parmelee* v. *United States* (C. A., D. C., 1940), 113 F. 2d 729, 731, 737, the opinion referred to the standard of "any" obscenity, stating:

> "But more recently this standard has been repudiated, and for it has been substituted the test that a book must be considered as a whole, in its effect, not upon any particular class, but upon all those whom it is likely to reach."

The Court went on to say at page 737:

> "The determining question is, in each case, whether a publication, taken as a whole, has a libidinous effect."

See also *Walker* v. *Popenoe* (C. A., D. C., 1945), 149 F. 2d 511, 512; *United States* v. *Levine* (C. C. A., 2d, 1936), 83 F. 2d, 156, 157.

The conclusion that the *containing* standard is an unconstitutional standard for either statute or judicial determination is affirmed by other authority as well. Thus, as recently as March 1954, in an exhaustive treatment of the law of obscenity (covering 100 pages) entitled "Literature, the Law of Obscenity and the Constitution", 38 Minnesota Law Review 295, Professors William B. Lockhart and Robert C. McClure of the University of Minnesota Law School, stated:

> "We believe the constitutional standard requires that a book be judged as a whole, rather than by isolated words or passages. Statutes that authorize a finding of obscenity based only on a part of the book are to that extent unconstitutional, as are judgments of obscenity similarly based. It is not possible for a court

> to give the requisite consideration to the value of a book, or to the effect of suppressing the book upon freedom of expression in literature, without considering the entire book and the relationship of the disputed passages to its theme. To permit a book to be condemned as obscene solely because of isolated words or passages ripped from the total structure of the work would result in depriving society of the value of the particular book, and the value of freedom of expression through literature, without judicial consideration of the value of what is being destroyed." (p. 392).

The statute in question prohibiting the sale and distribution of a book *containing* obscene language makes unnecessary the consideration of the book as a whole, but instead makes possible the condemnation of a book on the basis of a single isolated passage. This, we contend, is an unwarranted limitation upon the freedom of the press.

* * * * * *

Appellee's motion to dismiss this appeal substantiates the argument herein made. Thus, counsel for the appellee seek to avoid the effect of the word "containing" in the statute here under attack, contending that "the Michigan law when properly construed", requires a consideration of the book as a whole (Appellee's Br., pp. 10-11). Were this strained interpretation within the proper bounds of statutory construction and had it been so construed, our objection to the statute in this regard would have been obviated. The fact is, however, that the Michigan Court has already construed the "containing" provision in accordance with its plain meaning, as follows:

> "However, the Court does have to find that it is in violation of this particular Statute because the Statute does say that *it is sufficient to contain* lewd, immoral, obscene and lascivious language or description." (Italics supplied.) (Appendix A to Appellant's Jurisdictional Statement, p. 16.)

Indeed, the testimony of expert witnesses at the trial herein, directed at isolated passages, was predicated precisely upon the Court's construction of the statute as a "containing" one.

B.

Under the statutory provisions above set forth, the "language, * * * books", etc., complained of must be such as tend "to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth" in order to come under its prohibition.

It is respectfully submitted that this language is so vague and indefinite as to afford no "ascertainable standard" as to whether or not specific published matter violates the law. This Court has repeatedly condemned such vague statutes particularly when they seek to limit the constitutional guaranty of freedom of the press. Thus, in *Winters* v. *New York* (1947), 333 U. S. 507, the statute under consideration was construed as forbidding "the massing of stories of bloodshed and lust in such a way as to incite to crime against the person" (p. 514). This Court held that the standard of definiteness required for such a statute had not been met and that the statute was unconstitutional. To the same effect, *Burstyn* v. *Wilson* (1952), 343 U. S. 495; *Superior Films, Inc.* v. *Department of Education* (1954), 346 U. S. 587.

Indeed, this Court has already found it necessary to hold unconstitutionally vague a statute with virtually the identical language objected to in the instant statute. Thus, in *Commercial Pictures Corp.* v. *Regents of the University of the State of New York* (1954), 346 U. S. 587, this Court invalidated a statute which sought to prevent the exhibition of a motion picture on the ground that it was "immoral" and "would tend to corrupt morals". To the same effect, *Holmby Productions Inc., et al.* v. *Vaughan, et al.* (1955), ... U. S. ....., 100 L. ed. (Advance p. 73).

In the light of the clear rulings of this Court, it is submitted that this statute fails to meet the standards of definiteness required and must be held to be invalid.

C.

The obvious purpose of the statutory provisions herein questioned is the protection of the morals of our youth. Certainly, such purpose is within the scope of the police power of the state if such power is properly utilized. Basic to the requirement of due process, however, is the principle that the means employed to effect the exercise of such police power should be neither arbitrary nor oppressive but should bear a real and substantial relation to such end. *Treigle* v. *Acme Homestead Assoc.* (1936), 297 U. S. 189, 197; *Liggett Co.* v. *Baldridge* (1928), 278 U. S. 105, 111-112.

However, despite the narrow purpose of the statute in its limitation to only a segment of our society, namely, our youth, the proscriptions contained are such that a vital constitutional freedom is severely curtailed, though no youth at all may be involved. Thus, a bookseller of a book found to be offensive to the statutory provision may be prosecuted for selling such book to an adult. This was precisely the situation in the present case.

Indeed, the direct effect of the operation of this statute is to lower the permissible standard of adult reading to a child's level. Certainly what might corrupt a child in many instances would not corrupt an adult. Yet all adults would be deprived of books, not obscene by accepted judicial standards, but * * * "tending to the corruption of the morals of youth." *

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* Under this very statute the Prosecuting Attorney of Wayne County, Michigan, has deprived its adult population of the right to read, for example, the following well-known books by ruling that they violate the statute:

A World I Never Made	James T. Farrell
The Farmers Hotel	John O'Hara
Across the River and Into the Trees	Ernest Hemingway
The Catcher in the Rye	J. D. Salinger
1919	John Dos Passos
Battle Cry	Leon Uris
Psychology of Sex	Havelock Ellis

It seems clear, therefore, that the State has unnecessarily invoked a weapon of broad application in order to effectuate its narrow purpose. Under such circumstances, the means adopted bears no real and substantial relation to the end sought and constitutes an arbitrary and oppressive deprivation of the right of freedom of the press.

CONCLUSION

We respectfully urge that this Court note probable jurisdiction and declare unconstitutional the Michigan statute here involved.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1955

No. ~~548~~ 16

ALFRED E. BUTLER,

Appellant,

—against—

STATE OF MICHIGAN,

Appellee.

BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC., AS *AMICUS CURIAE*

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State of Michigan,

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BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC., AS *AMICUS CURIAE*

Interest of the Authors League as *Amicus Curiae*

The Authors League of America, Inc., a New York membership corporation, submits this brief as *amicus curiae* to urge respectfully that probable jurisdiction be noted; and that when this cause is considered on the merits the statute involved (28.575 Mich. Stat. Ann.) be declared unconstitutional.

The membership of The Authors League of America, Inc. consists of more than four thousand professional authors and playwrights residing throughout the United States, including many of the Nation's eminent literary figures.

Although statutes prohibiting "obscenity" and its galaxy of synonyms have their greatest impact on authors whose books are or may be proscribed, authors themselves have

no opportunity to directly assert or defend their Constitutional rights since prosecutions are invariably directed at booksellers or distributors. Therefore, one of the purposes of the Authors League is to express the views of writers on statutes restricting freedom of press; in keeping with that purpose (and with the consent of the parties) this brief is respectfully submitted to the Court.

ARGUMENT

I. Probable Jurisdiction Should Be Noted Because the Statute Is Unconstitutional and Because the Application of Different Tests of Obscenity Has Produced Variances in Protection of the Right of Freedom of the Press.

It is respectfully submitted that probable jurisdiction should be noted because the statute in question, representative of similar measures now in effect in several States (Jurisdictional Statement p. 7), is unconstitutional for the reasons hereinafter discussed at page 4, *et seq.*

The Application of Different Tests of Obscenity Has Produced Variances in Protection of the Right of Freedom of the Press.

There are now two standards for determining if a work is to be denied constitutional protection on the ground of obscenity. One is the standard announced in *United States* v. *One Book Entitled Ulysses*, 72 F. 2d 705:

> "* * * whether the publication taken as a whole has a libidinous effect" (p. 707).

Under this test the Circuit Court determined that "Ulysses" was not "obscene" even though it found:

> "That numerous long passages in Ulysses contain matter that is obscene under any fair definition of the word * * *" (p. 706).

The second standard is that contained in the Michigan statute in question, and applied in opinions such as *Besig* v. *United States,* 208 F. 2d 142. The Court below declared that the statute was violated because of language which the book contained, and stated that the statute "does say that it is sufficient to contain lewd, immoral, obscene and lascivious language or description" (Jurisdictional Statement, p. 16).

Indeed, the Court was aware of the difference between the two approaches, stating that not only did the book violate the statute, but that "even viewing the book as a whole" the language was "not necessary" to the proper development of its theme.

In *Besig* v. *United States,* 208 F. 2d 142, the Court held that the word "obscene" is used as

> "the word symbol for indecent, smutty, lewd or salacious reference to parts of the human or animal body or to their functions * * *" (p. 145).

Unquestionably, the Circuit Court in *Besig* was not concerned with whether the challenged works "taken as a whole (had) a libidinous effect." As in the case of the Michigan statute, the Court was concerned rather with language and theme *per se* (judged by such nebulous criterion as delicacy of language) for it said:

> "Yet we risk the assertion that there is an underlying, perhaps universal, accord that there is a phase of respectable delicacy related to sex, and that those compositions which purposely flaunt such delicacy

> in language generally regarded as indecent come under the ban of the statute'' (p. 147).

Thus, on the one hand, protection under the First and Fourteenth Amendment is denied on the ground of ''obscenity'' only where a work is considered as a whole, has a libidinous effect. On the other hand, protection is denied on the ground of ''obscenity'' if passages contained in a work, in the words of the *Besig* opinion, deviate from ''the phase of respectable delicacy related to sex.''

Under these circumstances, freedom of the press expands and contracts as the same work passes from one State to another, and from the jurisdiction of one Federal or State Court to another. It is respectfully submitted that rights established under the First and Fourteenth Amendments should be afforded uniform protection throughout the United States and that the Court should declare the extent to which writings may be excluded from the protection of the First and Fourteenth Amendments.

II. The Statute Should Be Declared Unconstitutional Because It Improperly Enlarges the Area of Writings Excluded from Protection Under the First and Fourteenth Amendments, and Is So Vague and Indefinite as to Permit Punishment of Writings Fairly Within the Protection of These Amendments.

A. The Prohibition of Books "Containing" Obscene Language Is Unreasonable.

Statutes which prohibit any book ''containing'' obscene matter improperly infringe the protection of the First and Fourteenth Amendments. The constitutionality of such

statutes, including the one here involved, has not yet been tested by appellate courts, although a similar statute was declared unconstitutional in *State* v. *Lerner* (Court of Common Pleas of Ohio), 81 N. E. 2d 282. However, the rationale of the decision in *United States* v. *One Book Entitled Ulysses* demonstrates why the standard applied in the Michigan statute and in *United States* v. *Besig, supra* is so unreasonable as to be unconstitutional.

In *Ulysses,* the opinion conceded "that numerous long passages in Ulysses contain matter that is obscene under any fair definition of the word * * * " (p. 706). However, the Court refused to ban the book for that reason, because of the unlimited possibilities of suppression that would necessarily follow. Judge Hand said:

> "The erotic passages are submerged in the book as a whole and have little resultant effect. If these are to make the book subject to confiscation, by the same test Venus and Adonis, Hamlet, Romeo and Juliet, and the story told in the Eighth Book of the Odyssey by the bard Demodocus of how Ares and Aphrodite were entrapped in a net spread by the outraged Hephaestus amid the laughter of the immortal gods, as well as many other classics, would have to be suppressed. Indeed, it may be questioned whether the obscene passages in Romeo and Juliet were as necessary to the development of the play as those in the monologue of Mrs. Bloom are to the depiction of the latter's tortured soul.
>
> "It is unnecessary to add illustrations to show that, in the administration of statutes aimed at the suppression of immoral books, standard works of literature have not been barred merely because they contained *some* obscene passages, and that confiscation for such a reason would destroy much that is precious in order to benefit a few" (p. 707).

Similarly, the New York Court of Appeals, in *Halsey* v. *New York Soc. for Suppression of Vice,* 234 N. Y. 1, stated:

> "No work may be judged from a selection of such paragraphs alone. Printed by themselves they might, as a matter of law, come within the prohibition of the statute. So might a similar selection from Aristophanes or Chaucer or Boccaccio, or even from the Bible. The book, however, must be considered broadly, as a whole" (p. 47).

It is respectfully submitted that *United States* v. *One Book Entitled Ulysses, supra,* reasonably defines the class of speech which may be denied constitutional protection on the ground of "obscenity". The Michigan statute and decisions such as *United States* v. *Besig, supra,* unreasonably broaden the definition of that class by drawing it in terms of forbidden themes, indelicate language or treatment, and "offensiveness".

In *Ulysses* and in *Halsey* v. *New York Society for the Suppression of Vice, supra,* the courts found that there was "obscenity" in the sense that the term is used in *Besig* and in the Michigan statute—"obscenity" in the dictionary sense of the word. However, *Ulysses* and *Halsey* held that it was unreasonable and impractical to prohibit works on that basis and thus "exclude much of the great works of literature"; therefore "obscene", as the label for a class of writing which may properly be banned, was redefined to mean libidinous effect determinable only by considering a work as a whole.

When this Court, in *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, 571, spoke of the "lewd and obscene" as one of the "well-defined and narrowly limited classes of speech"

which may be denied constitutional protection, did it mean "obscenity" in the sense of the *Ulysses* opinion or in the sense of the Michigan statute and opinions such as *Besig* v. *United States, supra*?

The only sense in which the term "obscenity" could reasonably be used to bound a "well-defined and narrowly limited class[es] of speech" is the sense established in *Ulysses* and *Halsey*. If "obscenity", as a ground for denying constitutional protection, is used in the sense of the Michigan statute and *Besig*, protection would be determined according to such vague standards as impropriety of subject matter or vagueness of language, and according to such nebulous criteria as the offensiveness of writings to the sensibilities of innumerable groups, religious, ethnic, geographic and economic.

Used in this latter sense "obscenity" as a standard would, in the words of Mr. Justice Frankfurter, touch "the very basis of a free society, that of the right of expression beyond the conventions of the day" (*Hannigan* v. *Esquire*, 327 U. S. 146, 160. In this context the statement of Mr. Justice Jackson in *Board of Education* v. *Barnette*, 319 U. S. 624, is apposite.

> "Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. * * * We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not lim-

> *ited to things that do not matter much.* That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order" (pp. 641-2).

It is respectfully urged that there is a particular need for affirming the rationale of *Ulysses* and on its basis setting aside the statute in question as unconstitutional. To do so would be to clarify the vagueness which is now inherent in the obscenity statute here involved and in others of which it is representative.

Vagueness in these statutes is dangerous because of the manner and area in which their coercive and restrictive influence operates. Invariably prosecutions are directed against booksellers or distributors who understandably do not have the incentive, as an author would, to challenge the applicability of the statute to a particular work. On the contrary, if there is any doubt about a book, and doubts are multiplied by statutory vagueness, the bookseller or distributor will simply abandon it. There is little loss involved in such a course, as contrasted with the risk of possible conviction and consequent loss of business for a cause in which the bookseller has no personal stake. Indeed, it is not uncommon for booksellers and distributors to resolve the issue against a particular book before there is even a threat of prosecution.

In recent years suppression has been increased by the efforts of local prosecuting attorneys and police authorities, operating under vague obscenity statutes and using the authority of their office, to compel booksellers and distributors to discontinue the sale of innumerable works. Cf. *Bantam Books* v. *Melko*, 25 N. J. Super. 292; *Common-*

wealth v. *Gordon, et al.*, 66 D & C Reports (Pa.) 101; *Report of the Select Committee on Current Pornographic Material,* HR 2510, 82nd Congress, 2nd Session; excerpts from testimony before this committee are set out in Exhibit A, hereto. The testimony indicates how the Detroit Police Department, using the statute here involved, has induced distributors and booksellers to "voluntarily" suppress innumerable books.

Judge Hand's fear, expressed in *Ulysses,* that wholesale suppression would result if books were banned on a standard broader than the libidinous effect of a work taken as a whole, has been unfortunately and all too frequently realized.

B. Prohibitions Phrased in Terms of "Minors" and "Youth" Are Unreasonable.

The statute in question also unreasonably restricts freedom of the press by denying to adults the right to possess, or to sell to other adults, books not found objectionable on any ground other than the effect they might "tend" to have on minors. We wonder whether the Legislature of Michigan would consider it reasonable to impose an absolute prohibition on the possession by adults (as well as children) of liquor, automobiles or firearms, on the theory that such instruments are unquestionably deleterious to the health and welfare of minors and therefore should be totally excluded from the State.

It is also unreasonable that "Romeo and Juliet" or "Hamlet" (which Judge Hand in *Ulysses* found to contain concededly "obscene" passages) should be denied to students 16 or 17 years of age. The unreasonableness of

such a classification is borne out by other provisions of the Michigan Penal Code.

For example, Section 339 of the Penal Code (Sec. 28.571, Mich. Stat. Ann.) makes it a crime for a female to debauch the morals of any boy under the age of 15 by seducing him; presumably once boys reach 15 years of age their morals can no longer be impaired by seduction, but can be by books containing obscene language!

Section 145-a of the Penal Code (Sec. 28.341, Mich. Stat. Ann.) makes it a crime to solicit a child under 16 years of age with intent to induce it to commit an immoral act; presumably children 16 years of age and older have developed resistance to such solicitation, but not to obscene or lewd language in a book.

Finally, Section 141 of the Penal Code (Sec. 28.336, Mich. Stat. Ann.) provides that no minor child under the age of 17 is permitted to enter a house of prostitution. Apparently, the Michigan Legislature has found that at 17 boys are qualified to visit such establishments, but not to read books containing obscene or lewd language!

C. The Language of the Statute Is Also So Vague and Indefinite That No Bookseller or Distributor Could Possibly Know When He Might Be Held to Have Ignored Its Prohibitions; On This Ground As Well, It Is Unconstitutional. (*Winters* v. *United States*, 333 U. S. 507, 519.)

The statute contains two qualifying clauses: (i) "tending to incite minors to violent or depraved or immoral acts", and (ii) "manifestly tending to the corruption of

the morals of youth." It is not clear whether the first of these clauses modifies all of the language which precedes it, or only the clause "or obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions."

Confusion is compounded by the use of the second modifying phrase—it is not clear what portion of the preceding language this is intended to modify. Presumably, the statute could prohibit, among other things, "obscene descriptions," which tend to incite "minors" to immoral acts, which manifestly tend to the corruption of the morals of youth. (Does this imply that there are immoral acts which do not manifestly tend to corrupt the morals of youth?)

No bookseller could determine whether passages of a book were "tending to incite minors to immoral acts, manifestly tending to the corruption of the morals of youth."

It is further submitted that the statute is too vague and indefinite in phrasing its prohibitions in terms of "tendencies". In *Commonwealth* v. *Gordon*, 66 D. & C. Rep. 101, Judge Bok said (p. 156):

> "The opinion of anyone that a tendency thereto exists or that such a result is self-evident is insufficient and irrelevant. The causal connection between the book and the criminal behavior must appear beyond a reasonable doubt."

That observation is even more pertinent to the vaguely worded double "tendency" clause of this statute.

CONCLUSION

We respectfully urge that the Court note probable jurisdiction, and declare the Michigan statute unconstitutional.

Respectfully submitted,

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EXHIBIT A

Excerpts from the testimony of Inspector Herbert W. Case of the Police Department, Detroit, Michigan, before The Select Committee on Current Pornographic Materials, 82nd Congress, 2nd Session, H. R. 2510.

Mr. Case. We operate under the State law, insofar as the literature is concerned; that is, the books, periodicals, magazines, and so forth, pictures, and primarily we use section 343* in its entirety for that purpose. (50)

* * * * *

A literary censor bureau was established in the Detroit Police Department in 1937. This group was absorbed by the detective bureau in 1941, and in 1948, a separate group was created to handle the problem. (51)

* * * * *

We then informed the distributor, that is, the wholesaler, who, in turn, notified the publisher, that they were in violation of our State statute, that they would have to be withheld from circulation, or they could be defended in court, as the case may be, in a test case, and such a test case had. The result was that they were withheld. (51)

* * * * *

Mr. Burton. Later was this approach on the part of the Detroit distributors extended to any other materials?

Mr. Case. Yes.

Mr. Burton. Such as magazines and pocket-size books?

Mr. Case. Yes, it was; and it is still being done.

The pocket-size magazine, the pocket-size book, didn't carry too much of a problem with us until subsequent to the comic problem.

Mr. Burton. About what date was that, Inspector?

Mr. Case. The great amount of complaints started coming in to us on the pocket-size books the latter part of—

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* Section 343 is the statute challenged in this proceeding.

well, I would say—1950, at the beginning of 1950, and they gradually grew in amount until 1951 it was necessary that we start screening these and, of course, I should mention the fact that we catalog, started cataloging, these books in a certain manner, and with a cross-index filing system on the excerpts, and the cards.

Now, in 1951 we called in—we have two distributors in Detroit. We called in the one independent distributor—the other is the American News Co.—and on one we had voluntary cooperation which, naturally, is the ideal method of suppression of this type of material, and the other was forced.

We called them in, and we threatened prosecution in one instance, in view of the fact that we could not very well say to the one who is cooperating that he could put it out, and the other one can't. We had them in a conference with the Wayne County prosecuting attorney's office, and there they voluntarily agreed to submit to us for inspection the pocket-size magazines before distribution.

It became necessary that we undertake a terrific job to screen those things with a very small staff of men. Now, it is far from being foolproof. We do screen them through, in what we call skimming off the filth, so to speak, at the top, with the result that we have books placed in three categories: One, which have been approved, read by us and approved, with the name of the distributor, the name of the author, and the date submitted for distribution in the city.

Then we have one which is partially objectionable, that is, one which we might object to in part or maybe a paragraph or a certain portion of that may technically fall within the meaning of our Michigan State statute, but is not one that we feel would be a good case to present to court.

The other is one that we definitely feel is a violation of

the law, and we have a letter back from the prosecuting attorney, after he examines the excerpts that we submit.

He sends us back a letter in writing, stating that it is obscene within the meaning of the Michigan State statute. (52)

• • • • •

Mr. Case. We have not to date, sir, lost a case in court. We have had no instances up to the present time, as far as the pocket-size books are concerned, as having gone into court. *They have always been withdrawn voluntarily.* (Emphasis supplied.)

In fact, we rather—I don't like to go to court except as a last resort because usually the title is exploited, and it is given impetus toward sales in a great many parts of the country. (53)

• • • • •

Mr. Burton. I would like to ask if these are some of the tests: One, excessive profanity or lewd and lascivious language; (2), the detailed description of erotic experiences; (3), the detailed description of objectionable practices, such as dope addiction, abortion, and so forth; and (4), general continuity and tenor of the story, if it be lewd?

Mr. Case. Yes. All of those things definitely enter into the problem of obscenity.

I think that that would all be brought out very definitely by the statute. Perhaps it might be well if I read it. It would definitely answer that one question in point. It is lewd or lascivious language and, of course, there is one very important phrase in that section which says "or tends to corrupt the morals of youth." (53-54)

• • • • •

Mr. Case. As I mentioned, we have two distributors in Detroit. One is an independent, and one is part of a national organization, the American Magazine Co.

Mr. Burton. You mean the American News?

Mr. Case. Yes; the American News Co.

We usually find that the distributor of the community is a man of good repute in his community, a family man. If he has children, they usually go to school there, and we *appeal to the distributor from that standpoint, and the result has been very gratifying to us because we feel that voluntary censorship on his part is the ideal method of suppression.* If we can keep that thing out of circulation and it doesn't hit the streets, why, we are accomplishing a lot more than attempting to do something about it after it has gained its objective of being circulated. (Emphasis supplied.) (54-55)

* * * * *

There have been times when various wholesalers, both in the State of Michigan and outside have asked for the list of books and magazines that we have withheld, but I do not supply them with that.

There is a very good reason for it. I will supply any law-enforcing officer, or any prosecuting attorney, but I do not intend to supply these people with these lists, outside of those people. If they want to get them, I advise them to go to the prosecuting attorney or chief law-enforcing officer in their respective area, and I will be only too happy to furnish them to him. (61)

* * * * *

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BRIEF OF JOHN BEN SHEPPERD, ATTORNEY GENERAL OF THE STATE OF TEXAS, AMICUS CURIAE

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BRIEF OF JOHN BEN SHEPPERD, ATTORNEY GENERAL OF THE STATE OF TEXAS, AMICUS CURIAE

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The State of Texas, as Amicus Curiae, appearing herein by its Attorney General, John Ben Shepperd, respectfully files this brief in this cause in support of the motion of Appellee, State of Michigan, to dis-

miss the instant appeal because of the importance to the State of Texas of the issues involved and the necessity that the power of the states be preserved where, through the proper exercise of the voice of the people and their legislatures, they prohibit such obscene and lewd books as exemplified by the book in point from circulating across the counters of bookstores and drugstores in an effort to keep such degrading literature out of the hands and minds of all people, especially those of young maturing ages.

Interest of The State of Texas

The State of Texas has a statute [1] similar to that of the State of Michigan which makes it unlawful to "engage in the business of editing, publishing or disseminating any pamphlet, magazine, or any printed paper devoted mainly or purporting to be devoted mainly to the publications of whoring, lechery, assignations, intrigues between men and women and immoral conduct of persons . . . ." There is also a statute [2] which forbids the sale or display of lewd or corruptive comic books.

Statement of The Case

The State of Texas herein adopts the State of Michigan's counterstatement of the case appearing on page 3, of that state's brief on Motion To Dismiss Appeal.

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[1] Art. 527, Tex. Civ. Stat. (Vernon 1948).
[2] Art. 527b, Tex. Civ. Stat. (Vernon 1948).

I.

The States of The United States Are Empowered To Protect Their Citizens From Obscene and Corrupt Publications

The states have consistently been held by the United States Supreme Court to have the power to control and to punish those who abuse the freedom of the press and speech by publications and utterances inimical to the public welfare deeming to corrupt public morals, incite to crime, and disturb the public peace. This was the expression of the Supreme Court in the landmark case of *Gitlow v. New York*, 268 U.S. 652, wherein a state statute of New York forbidding criminal anarchy was attacked as a violation of the 1st and 14th Amendments to the Constitution. In upholding the state statute, the Court spoke as follows:

> "It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents the punishment of those who abuse this freedom . . ."
>
> "That a state, in the exercise of its police powers, may punish those who abuse this freedom by uttterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question . . ."

Further expressions of the State's power to combat those forces which would undermine the fundamental requirements of decency and which would degrade and pervert the human personalities of both young and old alike is indicated by the later cases of *Near v. Minnisota*, 283 U.S. 697, *Chaplinsky v. New Hampshire*, 315 U.S. 568, and *Winters v. New York*, 333 U.S. 507. The Supreme Court in the Winter's case realized the importance of this and stated as follows:

> "We recognize the importance of the exercise of a state's police power to minimize all incentives to crime, particularly in the field of sanquinary or salacious publications with their stimulation of juvenile delinquency . . ."

It is, therefore, evident that the states, through their legislative bodies, are entitled and expected to protect the welfare of the citizens from those who would corrupt the citizens of the state by hiding behind an interpretation of the United States Constitution which would subvert its very meaning.

II.

The Michigan Statute Is A Valid Exercise of A State's Right To Punish Those Who Sell Books Composed of Obscenities Inimical To The Citizens of The State

The Michigan Statute is an expression of the Legislature of that state which forbids by punishment the sale of those books which are composed of "obscene, immoral, lewd, or lascivious language or de-

scription". The Federal Government and the Legislatures of many states have a similar statute which forbids books which are of such content and caliber as to pervert and corrupt the personalities of people from all walks of life and of every age.

The Michigan Legislature used the above words to describe the offense and then pointed out the effect of such publications as having the effect of inciting minors to violent or depraved, or immoral acts, manifestly tending to the corruption of the morals of the youth. The language identifying the offense in the statute, obscene, lewd, or lascivious, is the same language which the courts of every generation of this country have acknowledged as permissible as a proper exercise of the authority of the state to enact laws to promote the health, safety, morals, and general welfare of its people. *Near v. Minnesota*, 283 U.S. 697, 707; *Ex parte Jackson*, 96 U.S. 727; *Chaplinsky v. New Hampshire*, 315 U.S. 568; *Winters v. New York*, 333 U.S. 507.

In the *Chaplinsky* case the Court stated:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem."

The Court cited the *Near* case and went on to say that "lewd and obscene" were such descriptive terms. The latest expression of the Supreme Court in the *Winters* case gives direct support. There the Court stated as follows:

"The impossibility of defining the precise line *between permissible uncertainty in statutes caused by describing crimes by words well understood through long use in the criminal law—obscene, lewd, lascivious, filthy, indecent or disgusting*—and the unconstitutional vagueness that leaves a person uncertain as to the kind of prohibited conduct—massing stories to incite crime —has resulted in three arguments of this case in this Court." (Emphasis added.)

The Court further concluded its opinion as follows:

"To say that a state may not punish by such a vague statute carries no implication that it may not punish circulation of objectionable printed matter, assuming that it is not protected by the principles of the First Amendment, by the use of apt words to describe the prohibited publications. *Section* 1141, *Subsection* 1, *quoted in note* 2, *is an example.* Neither the states nor Congress are prevented by the requirement of specifity from carrying out their duty of eliminating evils to which, in their judgment, such publications give rise." (Emphasis added.)

Therefore, the latest expression of the Supreme Court gives express recognition of the validity of statutes containing the descriptive language embodied in the offense portion of the Michigan Statute.

III.

This Case Presents Facts Which Prevent The Subject Matter From Being Within The Protection of The First Amendment to The United States Constitution

This book is not within the protection of the First Amendment which protects freedom of the press.

There have been various rules and languages used to indicate when a book is such as will warrant a conviction under a charge of obscenity. The Common Law rule was announced in *Queen v. Hicklin*, L.R. 3 Q.B. 360 (1868) as follows:

> "Whether the tendency of the matter charged as obscenity is to disprove and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

This was adopted by many American Jurisdictions but has been discarded by most courts since 1930, when the case of *United States v. First Book Called "Ulysses"*, 72 F. 2d 705 (C.C.A.2d, 1934). Judge Hand noted that the book must be considered as a whole in an effort to balance the story being told with the questionable language used in telling the story.

Regardless of the rule, it is evident from a reading of this book that it is within either rule and is undesirable in such a degree as to warrant bringing

it within the Michigan statute. Such literature as this is not worthy of protection since any possible good is nebulous and of small social value when weighed against the potential responding human depravity of conduct and attitude.

We submit that many communities of our nation are in themselves outspoken enough in their environment in saying that "variety is the spice of life." There are also nations, whom we need not mention, whose complete moral life has become so debase as to cause a collapse of government and business, partly through an acceptance of such literature and its claim of freedom of expression.

Thus, this Court is faced with a contention that freedom of the press is endangered and that our liberty is being threatened.

Certainly this form of expression now before the Court is not part of any truth whose expression would keep us free, but instead would enslave us in a debachery of men and women in their communities and family life.

We feel, as did Lord Kenyon, when, during the French Revolution, he said:[3]

> "The liberty of the press is dear to England. The licentiousness of the press is odious to England. The liberty of it can never be so well protected as by beating down the licentiousness."

---

[3] Free Speech in the United States, Chaffee, p. 13.

IV.

This Statute Is Clear and Definite

The Statute before this Court is of such a character that men of common intelligence need not guess at its meaning. *Connally v. General Construction Co.*, 269 U.S. 385.

As set forth in this Statute, in order for the publication to meet the language of the Statute, it must contain obscene, immoral, lewd or lascivious language. The Court held in the *Winters* case that these words are well understood through long usage in the Criminal law. It was in this case that the Supreme Court expressly declared that a part of the New York Statute was a valid and certain statute. This part contains the very words that the Michigan Statute before this Court contains.

The first prerequisite states that the book must contain these descriptive words. It does not read "a book with any obscene language". Although appellant attempts to argue that the word "containing" is nebulous and uncertain, we must realize that all language is a vehicle of communication. If the statute read "a book with such language", there still would be a question as to how much of the book must *contain* the prohibitory language before it could be forbidden.

After setting up these prerequisites, the statute then describes their affect as "tending to incite minors to violent or depraved or immoral acts". This descriptive language manifests the intent of

the Michigan Legislature, wherein they set out the effect of such obscene books. Furthermore, the Legislature went on to say that these types of books "manifestly tend to corrupt the morals of the youth".

It is evident that a book containing obscene and lewd language and an obscene and lewd book are equivalent to each other. Since the Supreme Court has held Statutes similar to the Michigan Statute to be clear and certain and since the Michigan Supreme Court followed this mandate and held the statute valid, this appeal should be dismissed.

CONCLUSION

The States are authorized to prohibit the corruption of the personalities of their citizens by forbidding obscene and debase books from being sold in their respective states. The State of Michigan has enacted a statute in accordance with this power which is certain and definite, indicating what is to be forbidden and also why it is prohibited.

This country was not founded nor was the first amendment adopted by the people of the United States with any idea of protecting publishers and writers in their efforts to enrich themselves through "box office" appeal by pretending to write a "story" and then permeating it with obscenity and lewdness so as to appeal to certain portions of the public who are trained by these writers to respond to such literature as is before this Court.

The people of this Nation are entitled to the protection of their families structures from such efforts as this to attract the attention of young adolescents whereby these writers and publishers *would prostitute man's God-given instinct to be pro-creative in an attempt to line their pockets with this ill-gotten gain.*

We respectfully urge this Court to dismiss this appeal.

Respectfully submitted

.....

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Proof of Service

I, Philip Sanders, Assistant Attorney General of the State of Texas, hereby certify that on the 8th day of May, 1956, I served copies of the foregoing brief on the several parties thereto as follows:

1. On Appellant, Alfred E. Butler, by mailing a copy in a duly addressed envelope to his attorney of record as follows: William G. Comb, Dime Building, Detroit, Michigan.

2. On Appellee, State of Michigan, by mailing a copy in a duly address envelope to its attorneys of record as follows: Thomas M. Kavanagh, Attorney General of the State of Michigan; Edmund E. Shepherd, Solicitor General of the State of Michigan.

PHILIP SANDERS

APPELLANTS

BRIEF

BRIEF ON MERITS

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JOHN T. FEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 16

ALFRED E. BUTLER,

Appellant,

vs.

STATE OF MICHIGAN

APPEAL FROM THE RECORDER'S COURT OF THE CITY OF DETROIT, STATE OF MICHIGAN

BRIEF FOR THE APPELLANT

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IN THE

Supreme Court of the United States

October Term, 1956

ALFRED E. BUTLER, *Appellant,* —*against*— STATE OF MICHIGAN, *Appellee.*	No. 16

APPEAL FROM THE RECORDER'S COURT OF THE CITY OF DETROIT, STATE OF MICHIGAN

BRIEF FOR THE APPELLANT

Opinion Below

The only opinion below in the case at bar was that of the trial judge of the Recorder's Court of the City of Detroit, Michigan which was delivered orally at the conclusion of the trial proceedings. It is unreported but appears in the Record at folios 330-333, and in this Brief at pp. 24-26.

Jurisdiction

Appellant appeals from the judgment of the Recorder's Court of the City of Detroit, State of Michigan, entered on the 13th day of July, 1954 (R. 330-333),* convicting

*References are to folios of the printed Record.

him of violating Section 28.575, Michigan Statutes Annotated (Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953). He was sentenced to pay a fine of $100 (R. 333). Thereafter, his application for leave to appeal to the Supreme Court of the State of Michigan was denied by that Court on July 14, 1955 (R. 400). Notice of appeal to this Court was filed in the Recorder's Court of the City of Detroit on September 2, 1955 (R. 342-345), and probable jurisdiction was noted by this Court on February 27, 1956 (R. 401).

The jurisdiction of the Supreme Court to review this judgment by appeal is conferred by 28 U. S. C. Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal: *Winters* v. *New York* (1947), 333 U. S. 507; *Burstyn* v. *Wilson* (1952), 343 U. S. 495; *Holmby Productions, Inc. et al.* v. *Vaugham et al.* (Oct. Term, 1955), 76 S. Ct. 117.

Introduction

The Michigan statute which the appellant was convicted of violating makes it a crime to sell, offer or possess for sale a book "containing obscene, immoral, lewd or lascivious language" or "descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." The book involved was "The Devil Rides Outside" by John H. Griffin, published by Pocket Books, Inc. of New York City. In a motion to dismiss made at the outset of the trial and renewed during the course of the trial, the appellant contended that the Michigan statute, upon which the prosecution was based, was an infringement of the rights guaranteed him by the First and Fourteenth Amendments to the Consti-

tution of the United States in that it deprived him of his freedom of press and denied him due process of law (R. 3-5, 211, 235). The motion was based on the same contentions as are herein advanced and which have been persistently but unsuccessfully urged at all stages of the litigation.

After all motions were denied by the trial judge (R. 235), he found the appellant guilty of violating the statute (R. 333). Thereafter, the appellant filed a timely application to the Supreme Court of the State of Michigan for leave to appeal, contending that the said Michigan statute, on its face and as applied, and the judgment of the Recorder's Court predicated thereon, violated his rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States (R. 349-350). Although appellant's application for such leave to appeal was consented to by the People of the State of Michigan on the ground that "the issues involved in this case are of great public interest" and that a "clarification of the language of" the statute was "necessary" (R. 397), the Michigan Supreme Court entered an order on June 14, 1955, denying the appellant's application for leave to appeal (R. 400). Thus, this appeal involves a state court decision which sustained the validity of a state statute against the appellant's objections based on federal constitutional grounds.

In brief, "The Devil Rides Outside" (People's Exhibit 1) is a story written in diary form and in the first person singular. The name of the protagonist is never disclosed although it is apparent that he is a young American musician. The title emanates from an old French proverb to the effect that the devil rides outside monastery walls and the book is divided into two parts, the cloister within, and the

devil without. The first part is prefaced by a quotation from the eminent poet Gerard Manley Hopkins emphasizing man's bewilderment that sin and depravity should be inherent in his nature (R. 86). The second portion of the book is introduced by a quotation from St. Augustine which considers the incomplete nature of man's control over sin and temptation (R. 87).

The book traces the protagonist's growth in the religiously centered life of a Benedictine cloister in southern France and at the same time gives a rather complete and bitter picture of the small-town bourgeois life in the village outside of the monastery walls. It starts with his arrival at the monastery to study Gregorian chants and on the way from the village to the monastery, the bawdy taxicab driver, Salesky, tries to interest him in having one of the girls in the town. However, Salesky's services are refused and the protagonist commences living at the Benedictine monastery intending to return to Paris to take up again with his mistress there. The protagonist, strangely enough, becomes deeply attached to monastic life and ultimately embraces a deep religious faith. He cannot leave, despite bouts with fever and the unendurable cold. Weakened by the pitiful food and the hard life, he goes to live in the village to recover his health while continuing at the monastery his devotions during the day and his study of the manuscripts. He changes from a selfish and arrogant person to one who is seeking wisdom and peace and in the course of his sojourn he becomes tremendously impressed with his father-confessor and with a visiting physician, named Castelar, who apparently symbolizes the happy combination of godliness and manliness in the lay world.

In the period when he is learning to conquer his lusts, he has some earthy and realistically described experiences

with women and he struggles to rid himself of these physical demands and bodily passions. He finally wins out over his baser self by rejecting Madame Renée, his housekeeper and the village's leading matron whose beauty and powerful pride almost engulf him. The book closes with a foreshadowing of his return to the monastic cell after he has won through to sanctity.

Statutes Involved

The sole statute herein involved and the one under which the appellant was convicted, is Section 28.575, Michigan Statutes Annotated (Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953), which provides:

> "Any person who shall import, print, publish, sell, possess with intent to sell, design, prepare, loan, give away, distribute or offer for sale, any book, magazine, newspaper, writing, pamphlet, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious language, or obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

Questions Presented

The following questions are presented by this appeal. Does the said Michigan statute, on its face and as applied, violate the appellant's rights as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States in that:

(a) its provisions prohibit and punish the publication and distribution of a book to any member of the public because of the effect such book might tend to have merely on minors, thereby unduly limiting and restricting the appellant's constitutional rights of freedom of press, there being neither charge nor proof that the book in question was sold to or possessed by a minor;

(b) it is so vague and indefinite as not to comport with due process because its provisions prohibit and punish the publication and distribution of a book if such book contains matter which tends to incite minors to wrongful conduct and corrupt their morals—a wholly vague criminal proscription, predicated upon unascertainable and indefinite standards of conduct;

(c) its provisions prohibit and punish the publication and distribution of a book merely *containing* certain proscribed language and descriptions, thus precluding any consideration of the entire book as a whole and thereby imposing and enforcing unconstitutionally restrictive limitations on the appellant's freedom of press.

Statement

The case at bar involved the prosecution of the appellant, Butler, for selling, to a police officer, a paper-bound edition

of the book entitled *"The Devil Rides Outside,"* written by John H. Griffin and published by Pocket Books, Inc. of 630 Fifth Avenue, New York City (R. 25). The appellant conceded (R. 28) that he had sold the book in question (People's Exhibit 1) but specifically objected (R. 30-34) to the trial court's admission into evidence of a prepared selection of 101 excerpts from the book which the police officer, Inspector Herbert W. Case, in charge of the Censorship Bureau of the Detroit Police Department (R. 25), testified were "objectionable" (R. 32). In admitting these excerpts (People's Exhibit 2), the court overruled the appellant's contention that a consideration of these portions obviated a judging of the work as a whole (R. 33).

The only sale proven at the trial was the one to Inspector Case, an adult, and after his testimony the People rested (R. 41). The appellant's motion to dismiss, based on the unconstitutionality of the statute and on the weight of the evidence, was thereupon denied (R. 42, 235).

All the defense testimony introduced by the appellant was devoted to establishing that the book, viewed as a whole, was not in any way obscene, lewd, immoral or lascivious, but was a serious work of artistic and literary value. Thus, Harriet Good, Chief of the Book Selection Department of the Detroit Public Library (R. 43), testified that a hard-cover edition of this work (Defendant's Exhibit 1, R. 48, 77), published by Smith's, Inc. of Fort Worth, Texas, had been purchased by the Library and was listed there in the home reading department (R. 44). She stated, however, that "there were certain scenes and incidents in it that were for adult readers only and on that basis, we restricted its use for young people" (R. 57). The witness explained the Library's interpretation of the term "restricted use" (R. 48):

"It is the judgment of the persons involved, that the book has literary value. It should be represented in the Public Library. However, it should not be promoted.

"We consider books placed on the open shelf as books which we are willing to say we promote. The closed shelf of materials are available to adults who ask for them, and they are not placed freely for accessibility for any one at all, there is restricted use."

Freeman Lewis, the Executive Vice President of Pocket Books, Inc., the publisher of the reprint edition of the book (R. 61), testified that the work had been placed on sale in the month of March, 1954 (R. 62) and nationally distributed throughout the country without any stimulating promotion campaign to promote its sale (R. 66, 71-72). It was merely distributed through a system of independent wholesalers in the various states (R. 70-72).

The defense then called Professor Sculley Bradley, a Professor of English at the University of Pennsylvania and Chairman of that institution's Department of American Civilization (R. 78). Professor Bradley had been associated with the University for 34 years, was one of its graduates and was awarded its M.A. and Ph.D. degrees (R. 78-79). He had also served as a visiting Professor at Northwestern University, Duke University, University of Southern California, and presently was a specialist in American Literature and American Civilization (R. 79). The witness was the author of several biographies and a number of historical critical works and was Assistant Literary Editor of the Philadelphia Press from 1931 to 1933 (R. 80). He had also extensively reviewed books for many newspapers and magazines includ-

ing the Chicago Tribune, the New York Times, the Saturday Review of Literature and Harper's (R. 81).

Professor Bradley testified that he read "The Devil Rides Outside" and formed an opinion as to its literary value and artistic merit (R. 82-83). In giving his opinion of the literary value of the work Professor Bradley dealt extensively with its characters, themes and plots (R. 84-103) and likened it to the story of the Temptations of St. Augustine (R. 89-90, 102). He pointed out that the writing of this book belonged to "a modern form of writing in which a symbol has been employed, a symbol of action or character has been employed to suggest to the reader more metaphysical and difficult ideas that are associated with it, instead of using an expository method to relate the ideas in philosophical discourse" (R. 91). The book to this witness was a "story of conflicts in a man" which he felt were ultimately resolved "in a very interesting way" (R. 92). Eventually, the protagonist of the story found enough inner strength to resist all of the mundane temptations with "a final assertion of moral will" (R. 102). This climax, he claimed, was "a bit like the final temptation of St. Anthony in its enormous emotional build-up and power" (R. 102).

In summarizing, Professor Bradley stated that he thought the work was "a highly ethical novel" (R. 102) and "a novel with religious implications at every point, and, finally, a novel in which the various scenes and episodes are highly integrated" (R. 102). Viewed as a whole, the book was of "substantial literary merit" (R. 104); the writing was "extraordinarily good" (R. 104) and although as a first novel it contained "irregularities," it also had a "sincerity of purpose" and "power" (R. 104).

Consistently overruling the defense contentions that the work could not fairly or properly be appraised by its seg-

ments, this expert was required, on cross-examination, to answer many questions of Court and counsel concerning realistically drawn, lusty episodes in the work (R. 110, 116, 122, 125, 133-135). In the main, Professor Bradley insisted that he was only able to see the book as a whole, that a particular passage had no existence outside the book and that he was unable to separate the passage from the entire context of the work (R. 117-118, 121). When pressed further, he justified a particular instance as an integral part of the dominant themes or symbolisms of the work (R. 113, 121, 122-4, 131-132, 134). Other cited excerpts, he felt, added "to the literary value of the book" (R. 134) and the detailed descriptions therein were necessary to its style (R. 124). His final colloquy with the trial judge summarized his opinion on these matters (R. 139-140):

> "The Court: You feel then that by the use of well chosen, very descriptive and, let's say, high-sounding phrases, words and phrases, that that takes it out of the obscene, vulgar, immoral class?
>
> "A. I think that has been the experience of literature through the ages. The loftiness of the spirit and the use of the language for lofty purposes, has elevated the commonest of human materials and we can look at the greatest classics of literature and find it true.
>
> "The Court: Do you think that in this book, that it was necessary to describe in detail the sexual experiences of Mr. 'X' and his minute feelings all during those experiences, in order to make it of literary value?
>
> "A. Yes, Your Honor, I do.
>
> "The Court: Why?
>
> "A. Because I feel that the inner intention of this book is to bring the reader, make the reader

familiar with his own soul and his own experience. I think that this book is intended to have what one of our critics called the shock recognition for the reader. I think that the writer understands that we all go about, even shielding ourselves from the conscious recognition of what is present in our minds, present in our instincts, in our inner nature, so that we feel that we are surrendering to evils without ourselves, or we completely shut our eyes to the fact that there may be evil there, and that he has attempted to show us the whole working of the mind and experience of this character, in order that we should recognize ourselves and understand that the grace which he finds and G'Seau and Clement and other clerics are able to show him, is available to every one."

The other literary expert called by the defense was Professor Frank L. Huntley, Associate Professor of English of the University of Michigan (R. 144-145). Professor Huntley had taught the undergraduate body a general course on English and American literature and was a member of the Hopwood Committee of the University of Michigan "which has the responsibility of encouraging young writers" (R. 147). After reading "The Devil Rides Outside" (R. 147), he formed an opinion about the work which he asserted did not differ from Professor Bradley's (R. 148-149). Viewing the book as a whole and considering its dominant themes (R. 153), Huntley concluded that the work portrayed the age old problem (R. 155): "The devil is outside of us, the devil is inside of us. We are part animal and part angel." The witness found that the book had "substantial literary merit" (R. 153), and that the ultimate conflict was resolved in a "moral" and "religious" way (R. 157).

In a fashion similar to the cross-examination of Professor Bradley, Huntley's attention was also mandatorily directed to the excerpts from the book. With respect to particularly vivid and realistically written passages referred to by the prosecutor, the following colloquy, over objection, occurred in cross-examination (R. 163):

> "Q. * * * Now, do you feel that this book, People's Exhibit 1, a copy of which you have in your hand, would still be of great literary value if all the pornographic details were omitted?
>
> "A. No. Given this conflict as we have attempted to analyze it, it's like a conflict between A and B and you are taking A away.
>
> "Q. You feel then that it is necessary in a good literary treatment of the work, to include every detail of the sex act as is depicted there, do you?
>
> "A. I believe firmly that it is part of the structure, the spirit and the tempo, the color of the whole work. Here again, may I add——
>
> "Q. Go ahead.
>
> "A. ——that the intention of the author is called in question***".

Again, when asked, over objection, if he considered these passages offensive when taken alone, Professor Huntley answered (R. 167-168):

> "A. Taken alone. I find it difficult to say yes or no to that question. I find it impossible to answer it without an analogy. Let's say, take a statue: then let's concentrate just on the navel. The human umbilicus is not a beautiful object, but just take that. Is this apart from its intention, apart from the whole in which we find it, is this beautiful? I would say no.

"Q. In other words, Professor, tell me this, if I am correct. Is it your opinion that the work taken as a whole is a literary work, but that if you should select the excerpts which some people feel are obscene, lewd, lascivious and immoral, that in and of themselves, separate and distinct from the work as a whole, they could and should be classed in the lewd, lascivious and immoral classification?

"The Court: Or any of them?

"A. Well, I would, I think I would have to grant that, Mr. Kent, though I call it a perversion. * * *. Yes, it would be a perversion on the part of the reader to make such selections as I think it would be a perversion on the part of a person looking at a statue, simply to concentrate on the navel and nothing else, and then say this is not beautiful."

John H. Griffin, the author of the work (R. 173), testified concerning the many years he had spent in France, as a student and as a musicologist (R. 174-185). After service in World War II which left him blind and severely crippled, he became absorbed in studying the Benedictine chant in the monasteries throughout Europe where he did advanced research (R. 182-184). As a result of his studies in the French monasteries, many of which were in the rural parts of France, he developed a familiarity with monastic life, the manner in which the monks lived, their prayers and musical studies and the customs and mores of Gallic country sections (R. 185, 193). In 1951 he became a member of the Carmelite Order (R. 191) and a year or so thereafter he wrote this work, his first published novel, which took about seven or eight months to complete (R. 188, 192). He is also the author of other works on technical subjects, primarily, musicology (R. 186-187).

Turning to the work itself, the witness stated that while the book was not "autobiographical" (R. 192), he had "met most of those characters many hundreds of times" (R. 193). When questioned as to his purpose in writing the book, the author referred (R. 200) to one particular passage in the book that distilled his point of view and which appears on pages 196 and 197 of People's Exhibit 1, as follows:

> "And over and above, we are offered the freedom of choice. God, they say, gives us the freedom to choose. But this is a thing of the mind; these qualities of the outside are things of the mind. Can they legitimately be ugly, or even delusions? Can there be freedom of choice when the emotion, not the mind, has the thirsts? And aren't all these things tempered within us to a point where man lives his outside life with no need for consistency of ideal? Are not the smells of wet flesh, the comfort alternating with discomfort, the street sounds, the healthfulness of licentiousness to warm blood, the wonder of our miracle of livingness, enough? There's no freedom to choose until other knowledges insinuate themselves into the heart and the emotions, until other knowledges become other thirsts not to be denied. Then, and only then, can a choice be made.
>
> "Return to the inside, to our poor cloister and its world of the interior, its second portion of every man: the fog-filled interior known as man's health of soul. It too is a thing of the mind not yet ready to become a choice. Instead of riches we seek poverty, instead of the reeling insides we seek chastity, instead of sources of pride we seek sources of humility. But these aren't the end, as are wealth and success on the outside. They are the means to an end—the end being the destruction of all obstacles standing between us and the love of our life, which is God.

"Immutable standards of interior criteria. The paradox of destroying individuality to become whole, of forming the irreplaceable link of a chain knowing that that chain makes of us a portion of living time; knowing it will go on forever with our pinpoint of breathing as one of its links. It isn't done for self but for the many, and for God. And it creates a rapture within that grows into completeness.

"Two pictures, and a choice. The one which most of us know is brightly colored—brilliant, splashing—and satisfying to every cell of the human body. And over its hues death throws the shroud of an undetermined end. The other picture, the one within, is rather the color of the sun, white; the source of all colors before it is passed through the spectroscope and divided. It consumes the satisfaction of each cell of the body, so that the heat of many colors may become the Source of heat; burning the spirit into such a bliss as man may never know, but which, if we believe, is filtered through to us here on earth. It must not be contemplated lightly, for we shall never recover from it once it has seared us within. And the struggle is brief, for its fire becomes a process inside: first a cleansing process, and then the curing of the intangible maladies of reserve and modesty, and with them the stinginess of our desire to remain individual unto ourselves . . ."

Griffin admitted that passages and some of the language in the work were realistically blunt, often gross (R. 201), but pointed out that his whole thesis was to "show the degradation" to which "the complete following of these impulses" leads (R. 204). The incorporation of this type of material was symbolical—"it symbolized all misuse of virtue, of the gift of God" (R. 204). Moreover,

some of the realistic and blunt language that was used was spoken "in the idiom of the countryside" (R. 205).

On cross-examination, Griffin stated that the sex act was chosen as a symbol of all sins that are prevalent in the world because it "is an aspect of life that is universal." (R. 208). Thus, he testified (R. 208):

> "Q. Mr. Griffin, did you feel that the intimate details of the sex act were necessary for a consummation of the good literary style?
>
> "A. I felt that from the viewpoint of what I was aiming at, and from the viewpoint of artistic integrity, that by some absolute, they were necessary and justified."

In the course of his testimony, the author disclosed that the book had four or five editions (R. 208-209). While there were some differences between the Smith's hard-cover edition which the Detroit Public Library had on its "restricted shelf" (Defendant's Exhibit 1), and the Pocket Book edition (People's Exhibit 1) involved in this prosecution, these concerned changes of spelling, errors in nomenclature, punctuation, the use of exclamation marks and italics, and one scene deleted which showed that a priest might be breaking the seal of the Confession (R. 210-212). The reason for these changes was that Smith's made changes in the first manuscript which the author did not know about and he insisted upon eliminating most of these changes from the Pocket Book edition (R. 210-212, 223-225, 232).

At the conclusion of Griffin's testimony, the defense rested (R. 233) and all motions made at the opening of the case were again renewed by the defense in addition to a motion that the proof did not establish beyond a reasonable doubt the appellant's guilt of the charge (R. 235). The

Court at this time denied all of these motions and held that the statute was constitutional and not in violation of the First and Fourteenth Amendments of the United States Constitution (R. 235).

In rebuttal, the People called Rabbi Morris Adler who received the degree of Rabbi and Master of Hebrew Literature at the Jewish Theological Seminary of New York (R. 241-242) and also completed graduate courses in literature at Columbia University and City College of New York (R. 242). The Rabbi further indicated that a good deal of his work in his Congregation in Detroit was with the young people of that organization (R. 242). The witness testified that he read the book "fully and completely" (R. 242) and that he formed an opinion as to its literary value (R. 244). The next line of questioning was put to the witness by the Court and over the appellant's objection (R. 245-246):

> "* * * So, I am going to ask you again, Rabbi, if you feel that some of the material in there is justified by the literary value of the book, can you answer that?
> "A. That's a very difficult question, your Honor. I'd like to explain my position instead of saying yes or no.
>
> "The Court: Very well.
>
> * * *
>
> "A. Your Honor, my feeling is that this is a serious book, that this was written by a man with a talent for writing, and I think with a serious purpose in his mind. And I, for one, would not be too much concerned about the corruption of the morals of any one who read this book from a literary point of view out from his interest in literature. What I am afraid of is that somehow, word gets around about certain passages that are not read in connection

with the entire book, and that would constitute, of course, a different kind of effect. I am persuaded that this is a book of literary merit, and that the man who wrote it was seriously interested in the picking [depicting] an area of life which concerned him.

"The Court: Well, what about the obscene passages?

"A. I think that if they are read by people who have no interest in literature as such, or in the description of character and background that are found in the book, but simply to seek out these passages, there are passages that are exceedingly stimulating and which taken together with other influences in the lives of young people, may have a corrupting influence.

"The Court: May have a tendency?

"A. May have a tendency to corrupt, yes sir."

The next witness in rebuttal was Father Henry Villerot, a priest connected with the Blessed Sacrament Cathedral in Detroit who stated that he had a Bachelor of Arts degree from a parochial college and that he had never done any graduate work in literature (R. 247-248). The witness had never taught literature (R. 248) or reviewed any books for literary journals, newspapers or magazines (R. 251) but had done some work with a Catholic Church Committee to "clean up the literature both in comic and pocketbook form and even in magazine form on the stands around the city or the diocese of Detroit" (R. 249). The Court ruled, nevertheless, that the witness was qualified as a literary expert (R. 254) and Father Villerot was permitted to give his opinion concerning the work. His statement was as follows (R. 255):

"As far as the literary work, it definitely falls into a present classification, modern literature, and certainly has merit in that particular field insofar as I might say, the proper telling of the story that the author intends and his description, and that's what I would say in regard to it on a literary basis."

Again, over defense objection, we have his further testimony, prompted by the Court and subsequently elicited by the prosecution (R. 255-256):

"The Court: Let me ask you this, without going into any expert. Would the parts in there that were not to your liking, or not moral, or lewd, lascivious or obscene, would the purpose of the author in your mind, have justified the inclusion of those parts in that book, and you may have an objection to that, and I am going to take the Father's answer.

"A. As a literary work, maybe. As a work that should be given to the public for public consumption, no.

"The Court: You think that the literary value of the book would have been impaired at all by removing or changing some of those parts in the book that, well, particularly the vivid description of the, let's call it, sensual rather than sexual act. Do you think the literary value would have been destroyed if some of those were changed?

"A. According to my idea of the literary value, I'd say no.

"Q. (By Mr. Kent) You feel that it was unnecessary to go into the intimate details of the sensual act?

"A. Yes.

> "Q. And that could have been done without destroying whatever literary value there might have been to the book?
>
> "A. I think so, yes."

The People also called Bishop George W. Baber, Presiding Bishop of the African Methodist Episcopalian Church (R. 264) who received a Bachelor of Divinity Degree at Wilburforce University and "shopped about" (R. 265) for his graduate studies, attending "refresher courses and seminaries and so forth and so on" (R. 265). His only study in the field of literature was a "general survey" but he engaged in reading as "a constant avocation" (R. 265). He had never been asked to pass an opinion on the literary value of any book and had never taught any literary subjects (R. 266). The only remote connection he had with the literary field was that he "censored pictures * * * by invitation through the Council of Churches in Detroit" (R. 266). Despite objection by the defense as to his qualifications, the Court ruled that he was qualified as a literary expert and permitted him to testify as to his opinion of the literary value of the book (R. 268). He gave as his opinion (R. 268).

> "A. I think it is typical of current realistic literature, and it has value, it indicates that the writer has a good mind and pursued his subject. When I say 'good mind' I mean a good background of training, and he pursued his subject in an interesting fashion."

He further stated, however, that the descriptive emphasis on the sensual was unnecessary to the work (R. 269-270).

The next witness was Mildred Seitz, a Detroit housewife who received a Bachelor of Arts degree at the University of Missouri (R. 274) and had recently done some sub-

stitute teaching in the Detroit schools (R. 282-283) on American and English literature. The witness was President of the National Council of Catholic Women (R. 276) and gave her opinion of the work as follows (R. 276-277):

> "I think the book contains merit in this way. It is very graphically descriptive. It is built like the average modern novel, it has tremendous rises and fall of climax, both in description and in actual recounting of events."

Over the objection of the defense, the witness also testified that the intimate details of the sex act as depicted in the book detracted from its literary value and that such value would not have been destroyed if these details were omitted (R. 278-279). From her experience as a high school teacher of English she felt that high school students would not be able to appreciate its literary value (R. 281-282). Interestingly enough she disclosed that the Prosecutor sent her some excerpts from the book which contained its sex passages and she studied these before testifying (R. 284-285) and that "thinking about these incidents was so stimulating, that I could scarcely remember the serious tone of the book" (R. 286). The episodes, she explained, "recounted so graphically as they were and so stimulating as they were, obscured the serious purpose of the book" (R. 289).

Another witness, Mrs. Genevieve Lola Schoonover, a graduate of the University of Indiana who had done graduate work at that institution in Latin and English, appeared for the prosecution (R. 290). She was now a housewife and had taught English to groups of business women in Detroit (R. 291) and reviewed books for these groups and for clubs and publishers; reviews which were not written

but orally delivered (R. 291-292). She had read the book in question and stated that "the book has a certain amount of literary value" (R. 292). Over the objection of the appellant (R. 294-295), the Court adduced the witness' personal conclusion that the intimate details of the sex act and sensual passions and desires, as set forth in the excerpts, though "stated in high-sounding phrases" were "not necessary" to the value of the book (R. 295).

On cross-examination, Mrs. Schoonover stated that although the book "has literary merit" (R. 296), the author had confused the conflict of the spirit over the flesh (R. 296-297). She acknowledged also that some sort of emphasis might be required in describing the worldly temptations and that the amount of emphasis that was necessary would be different on the part of different readers (R. 297-298). Griffin, she felt, tried to work out his story "honestly" but that "from the standpoint of a discriminating reader he has not done so" (R. 299). In conclusion, she admitted that the particular passages of philosophy and life in the monastery were "well developed and well done" (R. 302); that there were a number of characters that were "well drawn" (R. 303); that there was an interesting description of scenes in the south of France and that the book gave a vital and stimulating account of life in the monasteries, of the Benedictine monks and their principles (R. 303). On redirect examination, she also acknowledged that the dominant theme of the book was "the conflict between sensuality and right living, the life of the spirit" (R. 303).

Charles Carroll Hollis, an Associate Professor of English Literature at the University of Detroit, was the last witness called by the People in rebuttal (R. 304). The witness did undergraduate work at Marquette University, attended the University of Wisconsin and also St. Louis

University and finished his graduate work at the University of Michigan (R. 304). Professor Hollis had been teaching in the English Department at the University of Detroit since 1938 and reviewed books (R. 305). The witness had read People's Exhibit 1 (R. 305) and stated his opinion that it was a "well-intentioned book that is not completely successful in its literary intentions" (R. 306). Actually, the lack of success, according to Professor Hollis, was the result of the author's "first person narrator technique or device" (R. 307), and that such technique "detracts from the significant theme of the work" (R. 308). When shown a list of the so-called stimulating sex passages of the work (R. 308), the witness could not unequivocally answer the question as to whether or not these passages detracted from the literary value of the work (R. 309). Instead, he said that it was really "difficult to make an answer that really answers my reaction to these passages" (R. 309) and added: "It is not the material in the passages, it is the handling, it is the way in which the passages are treated" (R. 309). In response to the Court's question, he stated that the author could have said "the same thing in another way, without making the book offensive at all" (R. 310). When the Court, over defense objection (R. 309), pressed the witness as to whether "it was necessary for the author to go into such minute description of details in order to carry out this theme of the inner conflict between" the spirit and the flesh (R. 310), the witness stated that he felt that the temptations of the flesh were presented here more for the sensual appetite of the reader (R. 310-311). On redirect examination, the Professor acknowledged that he might recommend the book to his graduate students (R. 319) but, as he explained, he would be cautious about recommending it because some passages in it would arouse the sexual appetites of the students (R. 320).

The rebuttal concluded, the People rested (R. 326). The defense then renewed all the motions previously made as to the unconstitutionality of the statute and the insufficiency of the evidence to warrant a conviction and these were denied by the trial judge (R. 326-328). In finding the appellant guilty of violating the statute, the Court gave the following oral opinion (R. 330-333):

> "In this case, the Detroit Police Department, through its officer, Inspector Herbert Case, arrested the defendant, Alfred E. Butler, for selling a book, namely 'The Devil Rides Outside,' written by John H. Griffin, claimed to be in violation of Section 740.343 of the Compiled Laws of 1948, as amended by Act 74 of the Public Acts of 1953, claiming it to be a book containing obscene, immoral, lewd, lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth. The defendant claims the action should be dismissed because the provisions of the Act under which this case is brought is repugnant to the First and Fourteenth Amendments of the Constitution of the United States, and to the Constitutional provision of the Constitution of the State of Michigan, guaranteeing the right of Free Press.
>
> Now, without reading the various Sections, various Amendments and Sections of the Constitution, I will say that in this connection, the defendant claims that the Statute is vague and indefinite and void because it merits the finding that the book contains obscene, immoral, lewd or lascivious language, without taking into consideration the literary value of the entire book, contending that it was necessary for the author to include in his book the language and descriptions objected to in order to make the book a complete work of art, and that said

language was necessary to show the conflict in the feelings, thought and action of the central figure of the book who remains unnamed, and who is torn between the desires for sexual and sensual pleasures, and the longing for a spiritual life and control over his desires. The defense contends that the language objected to is necessary, because only by the detailed description of his sexual and sensual desires and pleasures could the author show the contrast and the intense conflict raging in the man's soul, and that to change the language or descriptions would ruin or completely impair or greatly impair, rather, the work as a book, the book as a work of art.

The sincere purpose of the author being to vividly portray this intense conflict and the final victory of good over evil.

Now, after reading the book, and after having examined the authorities cited in the briefs of counsel, and after listening to the testimony offered in this case, the Court finds that the Act under which this case is brought is not unconstitutional, as being in violation and repugnant to the First and Fourteenth Amendments of the United States Constitution or against the Section of the Michigan Constitution guaranteeing the right of the Freedom of the Press.

And the Court further finds that the State of Michigan under its police power may secure the health and welfare of its citizens and its youth, and that it had a right to pass the Act in question.

The Court further finds that the language contained in the book is obscene and immoral and lewd and lascivious, and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth. There is little question as to the sincerity of purpose of the author in writing the book, but such sincerity does not afford him the

privilege or license of violating the law and seek to justify it under the guise of being absolutely necessary in order to maintain the literary value of the book.

There is little question in the mind of the Court that the author, with his beautiful command of the English language, could have portrayed to the reader the conflict within this individual, without setting forth in detail the intimate acts and lustful feelings in obscene, immoral, lewd and lascivious language, contrary to our Statute.

Now, in that connection, I've listened to the experts called by both sides and I am not convinced that that part of the book dealing with the sexual acts and pleasures of the author was necessary, even treating the book as a whole. However, the Court does have to find that it is in violation of this particular Statute because the Statute does say that it is sufficient to contain lewd, immoral, obscene and lascivious language or description.

So that if, therefore, if there ever is a review of my decision in this matter, I am not trying in any way to evade the issue; I am trying to follow the Statute as it is. So, I am holding that the defendant is guilty because he sold a book in the City of Detroit containing this language, and also because the Court feels that even viewing the book as a whole, it was not necessary to the proper development of the theme of the book nor of the conflict expressed therein.

Therefore, the Court finds the defendant guilty of the charge and orders him to pay a fine in the amount of $100."

The appellant's motion for a new trial, again based on the deprivation of his rights and privileges under the First and Fourteenth Amendments to the Constitution of the

United States and on the claim that his guilt of the charge was not sufficiently established, was filed July 20, 1954, and denied on February 24, 1955 by Judge W. McKay Skillman of the Recorder's Court (R. 337-9, 341).

Summary of Argument

The appellant contends that the Michigan Statute upon which his judgment of guilt was predicated, violates the constitutional guarantees of freedom of press and due process of law, inasmuch as its provisions plainly prohibit the circulation of any book which *contains* any obscenity of the type which tends to "incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth."

Thus, if any book has in it any scene, passage, phrase or word, which by some criteria not set forth in the statute nor otherwise ascertainable, tends to such incitement or corruption, it cannot be sold to any adult in the community. These broad provisions in this statute give rise to three grave constitutional defects which in and of themselves and more extensively in their combined and cumulative effect, enormously and invalidly restrict the appellant's right to sell and distribute literature.

Specifically, the statute is a grossly excessive restriction on the appellant's freedom of press in that it absolutely prohibits and punishes the publication and distribution of a book to any member of the public merely because of the effect such book might tend to have on minors. Moreover, the statute does not just protect the young from works that are obscene, immoral, lewd or lascivious, but specifies that such obscenity must be of the type that tends to "incite minors to violent or depraved or immoral acts, manifestly

tending to the corruption of the morals of youth." Thus, the general concept of obscenity, which courts can and have construed and which the public might be deemed to understand, has been modified and redefined in wholly vague, indefinite and incomprehensible terms. This vagueness and indefiniteness in a criminal statute renders it outside the pale of due process.

Finally, this statute very pointedly provides that if a book merely *contains* such injurious material for the young, it cannot be sold or circulated. This precludes any consideration of the entire book as a whole, its serious purpose and accepted literary value, and permits a trial court, as in the case at bar, to pass judgment on isolated excerpts in the book without regard to the work as a whole or its dominant themes. This unreasonably restrictive limitation on the distribution of a book is, the appellant contends, a patently unconstitutional deprivation of his freedom of press.

ARGUMENT

I

THE MICHIGAN STATUTE AND THE JUDGMENT PREDICATED ON IT PLAINLY AND SERIOUSLY INFRINGE THE FREEDOM OF PRESS AND DUE PROCESS OF LAW GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION.

The Michigan statute here in question is a criminal statute and as such must be strictly construed. Moreover, its constitutional validity has never been passed upon or even remotely considered by any appellate court in Michigan. Thus, when leave to appeal to the Supreme Court of Michigan was denied (R. 400), despite the prosecutor's concession that "the issues involved in this case are of great

public interest" and that a "clarification of the language of" this statute was "necessary" (R. 397), this statute's questionable constitutional validity escaped any judicial scrutiny except that of the Recorder's Court in the City of Detroit.

The appellant's attack on the unconstitutional aspects of this statute was timely and continuously directed. Before the commencement of the prosecution, these defects of the statute were clearly pointed out in the appellant's motion to dismiss (R. 3-5). Thereafter throughout the course of the trial in motions to dismiss the People's case and the entire case, these same contentions were again advanced (R. 41-42, 235-236, 327-328). Identical arguments were unsuccessfully addressed to the Supreme Court of Michigan and there rejected again when that Court refused to even consider Butler's appeal (R. 349-350, 400).

The Michigan statute now before this Court was given a strict construction by the trial judge who flatly rejected all the constitutional objections raised by the appellant and squarely ruled that its provisions were not in violation of the First and Fourteenth Amendments to the Constitution of the United States (R. 331-332). He also specifically found the language contained in the book to be "obscene and immoral and lewd and lascivious and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth" (R. 332). In refusing to grant an appeal, the Supreme Court of Michigan either approved this construction of the statute and the rulings thereunder, or avoided any consideration of the problem.

Appellant now contends in this Court that this Michigan statute, on its face and as applied, involves very manifest infringements on his constitutional rights of freedom of press and due process of law. As such it cannot be validly operative and the judgment convicting the appellant, wholly predicated upon its provisions, should be reversed.

A. The freedom of press and due process aspects of statutes restricting the distributing of literature.

The issues involved in this appeal, though emanating from the doctrines enunciated in *Winters* v. *New York* (1947), 333 U. S. 507, 510, have never been squarely presented to or resolved by this Court. They involve crucial aspects of freedom of press and due process as these rights are protected by the First and Fourteenth Amendments to the Constitution of the United States.

There are now quite a number of state statutes similar to the one at bar, punishing and prohibiting publication and distribution of literature "containing" material that is obscene in that it corrupts the morals of youth or tends to incite youths to depraved and immoral acts.* Hence, the constitutional validity of this type of legislation is a most vital problem in the publishing world of today and a serious challenge to the aforesaid constitutional liberties.

Naturally, the appellant concedes that the police power of a state is broad enough to justify legislation prohibiting and punishing the publication and circulation of literature which is obscene, or one of its equivalents, lewd, indecent or lascivious. That point is not involved in the case at bar. However, the *Winters* case expressly suggested that there are limits to the extent to which this Court will permit obscenity statutes to interfere with constitutional freedom of expression, when it said:

> "We recognize the importance of the exercise of a state's police power to minimize all incentives to

*For example: Colorado: Stat. Ann. (1935) ch. 48, sec. 217; Florida: Statutes (1951) sec. 847.01; Iowa: Code (1950) sec. 725.4; Maine: Rev. Stat. (1944) ch. 121, sec. 24; Rhode Island: Gen. Laws (1938) ch. 610, sec. 13; South Carolina: Code (1952) sec. 16-414; Tennessee: Williams Code (1934) sec. 11190; Vermont: Stat. Rev. of 1947, sec. 8490; Virginia: Code (1950) sec. 18-113; West Virginia: Code (1949) sec. 6066.

crime, particularly in the field of sanguinary or salacious publications with their stimulation of juvenile delinquency. Although we are dealing with an aspect of a free press in its relation to public morals, the principles of unrestricted distribution of publications admonish us of the particular importance of a maintenance of standards of certainty in the field of criminal prosecution for violation of statutory prohibitions against distribution."

Winters v. *New York* (1947), 333 U. S. 507, at p. 510.

It is by now well settled that by virtue of the Fourteenth Amendment, freedom of speech and of the press is secured to all persons against abridgement by a state.

Grosjean v. *American Press Co. Inc.* (1936), 297 U. S. 233, 243;
Lovell v. *Griffin* (1937), 303 U. S. 444, 450;
Schneider v. *State of New Jersey, Town of Irvington* (1939), 308 U. S. 147, 160;
Bridges v. *State of California* (1941), 314 U. S. 252;
Pennekamp v. *Florida* (1946), 328 U. S. 331, 335.

It is, of course, clear that freedom of the press is not limited to newspapers and periodicals but, in its historic connotation, comprehends every sort of publication which affords a vehicle of information and opinion. *Lovell* v. *Griffin* (1937), 303 U. S. 444, 450. Such liberty is protected at every step in the process of creation, publication and circulation, from the writing and imprinting of the work until it reaches the hands of the ultimate reader. As

Mr. Justice Hughes said in the *Lovell* case, *supra,* quoting from *Ex parte Jackson* (1877), 96 U. S. 727, 733:

> "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value."
>
> *Lovell* v. *Griffin,* 303 U. S. 444, 452.

B. Prohibiting the Circulation of a Book to Any Member of the Community on the Ground That It May Tend to Have an Injurious Effect Upon a Minor, Is an Unconstitutional Deprivation of the Appellant's Freedom of Press.

The Statute in clear and unquestioned terms provides, insofar as is herein pertinent, that:

> "Any person who shall * * * sell, * * * distribute or offer for sale, any book, * * * containing obscene, immoral, lewd or lascivious language, * * * or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, * * * shall be guilty of a misdemeanor."

Thus, from its terms there can be no doubt that if a book contains material which the statute classifies as objectionable for youth, it cannot be sold at all to any adult, or to any library or to any educational institution. The statute does not simply outlaw the distribution of the book to a minor. Instead, it lowers the permissible standard of adult reading to a child's level.

The case at bar particularly highlights this patent invasion of the appellant's constitutional right of freedom of the press because it did not deal with any actual or specifically intended distribution of the book to any minor. It was a Detroit police inspector who bought the book and brought the charge (R. 25-28), though elsewhere, the work

was distributed openly and generally by newsstand sales to the American public at large (R. 70). There was no proof at the trial indicating the probable audience of this book or that it was specially directed to young readers. On the other hand, there was evidence introduced by the appellant that the book was nationally advertised and distributed to the general public and without any special stimulating promotion (R. 66, 71-72).

The appellant does not contest that the state's police power encompasses the protection of the morals of youth. But such power must be properly utilized. If the measures adopted are arbitrary and oppressive, they violate constitutional guarantees. *Treigle* v. *Acme Homestead Assoc.* (1936), 297 U.S. 189, 197; *Liggett Co.* v. *Baldridge* (1928), 278 U.S. 105, 111-112. Here, the proscriptions contained in the statute are such that a vital constitutional freedom is drastically reduced even though no minor may be in any wise involved. Moreover, a book which might corrupt a child in many cases would have no improper influence upon a mature person, yet the Michigan adult cannot read or purchase it. It is patent, therefore, that the statute employs wholly excessive means to combat the evil; legislation which arbitrarily and oppressively infringes on the appellant's freedom of press.

This statute and the many similar ones in other states (*supra*, p. 30) represents a legislative codification of the rule in the old English case of *Queen* v. *Hicklin* (1868), L. R. 3 Q. B. 360, 371, in which Lord Chief Justice Cockburn defined the "test of obscenity", as:

> "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

Most American courts originally followed this rule in construing statutes generally prohibiting the possession or distribution of obscene material. However, by 1935 the doctrine of the *Hicklin* case had been effectively routed, particularly in the federal circuits. Judge Augustus N. Hand, in the celebrated *Ulysses* case, speaking for the Court, said that a book is obscene only if its dominant effect is libidinous, and this decision affirmed Judge Woolsey's District Court opinion which pointed out that the law was concerned only with the "person with average sex instincts." *United States* v. *One Book Entitled "Ulysses"* (S. D. N. Y. 1933), 5 F. Supp. 182, 184, aff'd., 72 F. 2d. 705, 707-708; *Walker* v. *Popenoe* (D. C. Cir. 1945), 148 F. 2d. 511, 512; *United States* v. *Levine* (2d. Cir. 1936), 83 F. 2d. 156, 158.

But while most courts ultimately abandoned the practice of construing obscene literature statutes solely to safeguard the young and the weak, some state legislatures commenced to enact statutes explicitly providing for such protection and which outlawed books tending to corrupt the morals of the young. [See: Lockhart and McClure: *Literature, the Law of Obscenity, and the Constitution.* (1954), 38 Minn. Law Review, pp. 295, 339-340.] In those jurisdictions, and Michigan manifestly is one of them, the modern enlightenment and advance of judicial opinion concerning obscenity is unavailing since the statutes themselves require the courts to apply and enforce this rigid "youth" test even though the interests of the entire adult membership of the community might thereby be sacrificed.

In view of the specific provisions of this Michigan statute, the trial judge in the case at bar had the difficult choice of either declaring it unconstitutional as a violation of the freedom of press or enforcing its precise terms. In upholding the statute and rendering a judgment of conviction, the Court below pointedly found that there was mate-

rial in the book which "tends to incite minors to violent or depraved acts, to the corruption of the morals of youth" (R. 332). Hence, in the protection of the interests of those who might be abnormally susceptible, he was necessarily required to eliminate the interests of those who might have profited from the work.

Of course, the basic question in this aspect of the case is whether the rule of the *Hicklin* case, whether adopted by judicial construction, or enforced by legislative fiat as in Michigan, can ever comport with the constitutional requirement of freedom of press. The appellant squarely contends that it cannot because it operates as a restricted license to publish and distribute only those works which might have no ill effects upon the young. This statutory restriction of adult reading to books wholly acceptable for adolescents is a deep and far reaching invasion of the constitutional right. It cannot possibly be counterbalanced by the claimed safeguarding of the young from the contingent and unpredictable effect a book might have upon them.

C. The Michigan Statute Defines Obscenity in Vague and Indefinite Terms and Hence Its Restrictions on the Sale of Obscene Literature do not Comport with Due Process.

The statute does not simply prohibit the distribution of a book "containing" obscene, immoral, lewd and lascivious language and descriptions. In its provisions the concept of obscenity is unqualifiedly defined as and hinged on the phrase that such obscenity must be of the type "tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." The judgment of the trial court squarely found that sections of the book in question did just that, the opinion stating (R. 332):

> "The Court further finds that the language contained in the book is obscene and immoral and lewd and lascivious, and is such that it tends to incite minors to violent or depraved acts, to the corruption of the morals of youth."

But the appellant contends that this statutory definition of obscenity and lewdness is far too uncertain in its meaning and is not based on any standard of conduct that a person can perceive or to which he can conform.

On several occasions during the examination of the literary experts, testimony was elicited, over the objection of the appellant, that certain realistically written passages in the work might tend to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth (R. 170, 245-246, 256). Obviously, the Court was acting under the wording of the statute and on one occasion so stated (R. 170). However, this procedure inevitably placed the appellant on trial on a criminal charge that was vague and indefinite since there were no standards of conduct, either in the statute, or placed in evidence by the People, which adequately set forth what incited minors to violent or depraved or immoral acts, or what manifestly tended to the corruption of their morals.

The appellant contends, therefore, that such legislation is not sufficiently definite to enable the average member of the public to ascertain what publications are interdicted. A criminal statute, he argues, can not require that every person distributing a book correctly determine whether the work tends to incite youths to violence, immorality or depravity, or whether it would corrupt the morals of minors. Hence, the legislation herein involved is too vague and indefinite to be constitutionally valid. *Winters* v. *New*

York (1947), 333 U. S. 507; *Burstyn* v. *Wilson* (1952), 343 U. S. 495; *Commercial Pictures Corp.* v. *Regents* (1954), 346 U. S. 587; *Gelling* v. *Texas* (1952), 343 U. S. 960; *Holmby Productions Inc. et al.* v. *Vaughan et al.* (Oct. Term, 1955), 76 S. Ct. 117; *Superior Films, Inc.* v. *Department of Education* (1954), 346 U. S. 587.

The *Commercial Pictures Corp.* case, *supra,* makes manifest that this Court, construing the constitutional guarantees of freedom of press and due process, has squarely ruled that the word "immoral" and the phrase "tend to corrupt the morals" in a prohibitory statute or as the basis of an adjudication, are too vague and indefinite to comport with due process of law and operate as an unconstitutional infringement of the freedom of press. In the *Superior Films* case, *supra,* decided as a companion case to the *Commercial Pictures Corp.* case, this Court held void for indefiniteness an Ohio statute allowing the state censors to license the exhibition of motion pictures only if they were "moral," "educational" or "amusing and harmless in character." In the *Burstyn* case, *supra,* the New York statute, authorizing a denial of a license to exhibit a film if the Regents found it to be "sacrilegious," was also held by this Court to be too vague to comport with due process.

Again, most recently, this Court was called on to construe a Kansas statute in the *Holmby Production* case (October Term, 1955) 76 S. Ct. 117. There the state law provided that it was the duty of the license board to refuse to license the exhibition of films which were "cruel, obscene, indecent and immoral or such as to tend to debase or corrupt morals." The board could only approve films which were "moral" and "proper." The particular film in question was denied a license under the terms of the statute, and

this Court in its October 1955 Term, reversed the Kansas Supreme Court in a *per curiam* order merely citing its decisions in the *Burstyn* and *Superior Films* cases.

Any fair appraisal of these precedents, decided in recent years by this Court, makes apparent that state statutes, as in the instant case, which authorize the banning of vehicles of artistic expression on grounds which are vague, indefinite or uncertain, squarely violate the constitutional guarantees of the Fourteenth Amendment, and hence are invalid. On this score surely, there can be no difference between movies and books.

In the case at bar the vagueness and uncertainty of the statute is striking. We are in no wise informed as to what standards guided the trial court in determining that "The Devil Rides Outside" tended to incite minors to the unlawful conduct specified, or to corrupt their morals. The statute itself sets up no criteria on this subject and the only evidence elicited to support the charge that the book did have that tendency, were the blandly expressed opinions of witnesses who were qualified at the trial merely as literary experts (R. 170, 245-246, 256).

D. Because It Prohibits the Distribution of a Book "Containing" Any Obscenity, the Michigan Statute Violates the Constitutional Guarantees of Freedom of Press and Due Process of Law.

A vital defect, apparent on the face of the statute, is that it does not permit a consideration of the work as a whole because it prohibits and punishes the publication and circulation of a book "containing" obscene language and descriptions. The trial itself accentuated the importance of this constitutional defect. Over objection and exception by the appellant, the People's literary expert witnesses were, under the wording of the statute, allowed or directed to pass

judgment on isolated excerpts of the book, taken from their context and treated without regard to the work as a whole or its dominant themes (R. 245-246, 255-256, 294-295). The trial court's ultimate justification for this testimony was the fact that the statute prohibited the sale or distribution of a book "containing" obscene, immoral, lewd or lascivious language or descriptions (R. 332-33).

Although the trial court, acting under the mandate of the statute, found that "The Devil Rides Outside" *contained* obscenity, the judge acknowledged "the sincerity of purpose of the author in writing the book" (R. 332) and "his beautiful command of the English language" (R. 332). All of the People's expert witnesses virtually conceded that the book had literary value or at least was seriously intentioned (R. 245-246, 255, 268, 276-277, 292, 302-303, 306, 323-324). Their principal objection was that the lusty descriptions and language in the work were unnecessary and diminished its literary value (R. 256, 269-270, 278-279, 289, 295) and the trial judge came to the same conclusion in his opinion. However, it should be carefully noted that he made no finding that the book, viewed in its entirety, was obscene. Instead, he merely commented that even "viewing the book as a whole," the excerpted portions were "not necessary to the proper development of the theme of the book nor of the conflict expressed therein" (R. 333). This was nothing more than his opinion as to the artistic necessities and value of some material incorporated in the work.

The precise language of the opinion makes abundantly clear that the trial judge predicated his finding of obscenity solely upon the word "containing" found in the statute. Thus, (R. 332-333):

> "However, the Court does have to find that it is in violation of this particular Statute because the Stat-

ute does say that it is sufficient to contain lewd, immoral, obscene and lascivious language or description.

So that if, therefore, if there ever is a review of my decision in this matter, I am not trying in any way to evade the issue; I am trying to follow the Statute as it is. So, I am holding that the defendant is guilty because he sold a book in the City of Detroit containing this language, and also because the Court feels that even viewing the book as a whole, it was not necessary to the proper development of the theme of the book nor of the conflict expressed therein."

The trial court's comments about the book as a whole were not only dicta which expressed his non-expert opinion of the literary necessities of the style and writing, but were logically invalid. The inclusion of unnecessary language and descriptions could not seriously impair the literary value of the work so long as such material was relevant. The opinion makes no finding or comment about these passages being irrelevant or out of context. It hardly could since all the experts agreed that it was a story devoted to portraying the conflict in man between spiritual advance and the temptations of the flesh. Whether or not the excerpted passages were necessary is essentially a question of degree but they were undoubtedly vitally connected to the dominant theme of the book and hence forcefully relevant.

Nor did the trial judge make any finding or observation that the abundance of these objectionable passages rendered the whole work obscene. This, of course, would be difficult to do since "The Devil Rides Outside" is a work of almost 600 pages, acclaimed by reviewers, and conceded by virtually all of the People's experts to be a serious effort of literary merit (People's Exhibit 1; R. 245-246, 255,

268, 276-277, 292, 302-303). Here again, it is obvious that the prosecution's attack on the book and the application of the statute to it by the trial court were wholly centered on the fact that it *contained* some offensive material.

In the case at bar the Michigan legislature has compelled a court to ban a book because of some of its contents. But those who distribute books in the community would be at a total loss to know how to live by this rule. It would be impossible for a member of the public to determine whether any work, especially an apparently serious and lengthy book, *contains* some isolated proscribed material to be judged out of its context, ripped from the total structure of the work and without consideration of its relationship to the book's theme, literary style or purposes. There is, therefore, a vast area of indefiniteness and uncertainty in the operation and application of this statute and in consequence it necessarily runs afoul of due process of law.

In the case at bar, however, there is a greater requirement for definiteness because this "containing" statute also impinges on the guaranteed constitutional freedom of press. In effect, it obviates a fair consideration of the work as a whole or the dominant purposes of the publication. At present, most federal and state courts in which the question has been considered have explicitly adopted the requirement that a book must be judged as a whole, not by its parts taken out of context. *United States* v. *One Book Entitled "Ulysses"* (2d. Cir. 1934), 72 F. 2d. 705; *United States* v. *Levine* (2d. Cir. 1936), 83 F. 2d. 156; *Parmalee* v. *United States* (D. C. Cir. 1940), 113 F. 2d. 729; *Walker* v. *Popenoe* (D. C. Cir. 1945), 148 F. 2d. 511; *Halsey* v. *N. Y. Society* (1922), 234 N. Y. 1, 4; *Commonwealth* v. *Gordon* (1949), 66 Pa. D. & C. 101, *aff'd. sub. nom. Commonwealth* v. *Feigenbaum* (1950), 166 Pa. Super. 120, 70

A. 2d. 389; *State* v. *Lerner* (Ohio C. P. 1948), 81 N. E. 2d. 282; *New American Library of World Literature* v. *Allen* (N. D. Ohio, E. D. 1953), 114 F. Supp. 823.

In recent cases in both the state and federal courts in Ohio, statutes punishing or prohibiting the circulation of a work "containing" an obscenity, or of "any" obscene nature, were held unconstitutional because in obviating a consideration of the work as a whole, such statutes were too broad an invasion of the freedom of press. *State* v. *Lerner* (1948), 81 N. E. 2d. 282, 285, *supra; New American Library* v. *Allen* (1953), 114 F. Supp. 823, 830-831, *supra.*

This abundance of authority makes manifest that prosecutions against works of literature are constitutionally valid only when the dominant effect of the work has been judged and the book considered as an integrated whole. Hence, statutes, such as the one in the instant case, that authorize a finding of obscenity based only on a part of the work are to that extent unconstitutional, as are judgments of obscenity similarly based.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Recorder's Court of the City of Detroit should be reversed and the Michigan statute herein involved should be declared unconstitutional.

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BRIEF ON MERITS

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 16

ALFRED E. BUTLER,

Appellant

v.

STATE OF MICHIGAN

Appeal from the Recorder's Court of the City of Detroit, State of Michigan

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BRIEF FOR APPELLEE

I

Opinion Below

The opinion of the trial judge may be found in the printed transcript of record at pp. 230 to 232.[*]

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[*] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed transcript of record.

II

Jurisdiction

It is readily conceded that questions sought to be reviewed were raised in the court below (R. 3), that they were duly presented to the State's highest court in a timely application for leave to appeal (R. 240), that such application was denied (R. 295) without opinion, that the recorder's court of the city of Detroit thereupon became the court of last resort from which appeal to this Court could be taken, that appellant's notice of appeal (R. 236) was timely filed, and that this Court noted probable jurisdiction (R. 296). We do not agree, however, that cases cited in counsel's jurisdictional statement, brief, p. 2, are controlling. We think they may be distinguished. *Winters v. New York* (1947), 333 U.S. 507; *Burstyn v. Wilson* (1952), 343 U.S. 495; *Holmby Productions, Inc. et al., v. Vaughan et al.*, 350 U.S. 870.

III

Introduction

We are not in accord nor can we accept the appraisal of the book here in question found in counsel's "Introduction," brief, pp. 2-5, for it is our position that while THE DEVIL RIDES OUTSIDE possibly possesses some degree of literary merit, entitling it to a place on the "closed shelf" of a public library when first published in a hard-cover edition, it is dominantly obscene as published in a low-priced, paper-cover edition, prominently displayed in drug stores and other places frequented by adolescents.

IV

Statute Involved

There is drawn in question the constitutional validity of a section of Michigan law which in substance though in slightly varying phraseology appeared in the Revised Statutes of 1838, [1] was reenacted in the Revised Statutes of 1846,[1a] continued in successive compilations for more than 80 years,[2] was embodied in the penal code of 1931 and amended in 1953.[3] Only on 3 occasions has the Michigan Supreme Court construed or applied the act.[4]

Section 343 of Michigan's penal code, as amended, so far as here applicable and as it stood when appellant sold the book in question (June 16, 1954), provides:

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[1]

Mich. Rev. Stat. 1838, Part 4th, Title 1, Chap. 8, § 10, page 647, official edition. This section probably derived from an earlier act of the governor and judges or the legislative council of the Territory of Michigan.

[1a]

Mich. Rev. Stat. of 1846, Title XXX, Chap. 158, § 13, p. 682, official edition.

[2]

Comp. Laws Mich., 1857, § 5868, 1871, § 7703, Howell's Stat., § 9289, Comp. Laws 1897, § 11700, 1915, § 15474, and 1929, § 16829.

[3]

Penal Code, Pub. Acts 1931, No. 328, § 343, as amended by Pub. Acts 1953, No. 74, effective Oct. 2 [Comp. Laws Supp. 1948, § 750. 343 (Mich. Stat. Ann.—Henderson—1954 Rev. § 28.575)].

[4]

People v. Girardin, 1 Mich. 90; People v. Ketchum, 103 Mich. 443; and People v. Lathers, 223 Mich. 92.

"Sec. 343. Any person who shall . . . sell . . . any book . . . containing obscene, immoral, lewd or lascivious language, or obscene, immoral, lewd or lascivious . . . descriptions, [tending to incite minors to violent or depraved or immoral acts,] manifestly tending to the corruption of the morals of youth, . . . shall be guilty of a misdemeanor."[5]

It should be noted in passing that this section of Michigan's Penal Code does not include those provisions of Michigan law cited by Mr. Justice Frankfurter in his dissenting opinion in *Winters v. New York* (1947), 333 U.S. at 522, as among statutes which fell by force of that decision.[5a]

V

Counter-Statement of Questions Presented

Laying aside as irrelevant, any "marginal case" which might arise in the future, and applying the statute involved strictly and exclusively to facts and circumstances disclosed by the record in this cause,

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[5]

The bracketed phrase ["tending to incite minors to violent or depraved or immoral acts,"] was added by amendment, Pub. Acts Mich. 1953, No. 74, effective October 2.—A misdemeanor is punishable by maximum imprisonment for 90 days or a fine of $100 or both. Penal Code, § 504 [Comp. Laws 1948 Supp., § 750.504 (Stat. Ann. 1954 Rev. § 28.772)].

[5a]

Mich. Penal Code, § 344 [CL 1948, § 750.344 (Stat. Ann. 1954 Rev. § 28.576)] provides: "Any person who sells . . . any book . . . devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime shall be guilty of a misdemeanor."

(1) may not the State of Michigan, in a legislative enactment applied in this case to a low-priced, paper-bound book prominently displayed for sale in drug stores and other places frequented by adolescent school children, and in exercise of inherent police power, proscribe the sale and distribution of a book containing descriptions of sex acts, so obscene as to tend "to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of youth";

(2) also bearing in mind the commonly-accepted meaning as well as judicial definitions of the term "obscene," which include the element or factor of "corruption of morals," is the language of § 343 of the Michigan Penal Code so vague and indefinite as to offend the First Amendment and the Due Process Clause of the Fourteenth Amendment to the Federal Constitution; and

(3) does § 343 of Michigan's Penal Code as here applied and properly construed, deprive appellant of any rights under the First Amendment and the Due Process Clause of the Fourteenth, because it prohibits the sale of a book "containing" obscene descriptions tending to corrupt the morals of youth.

VI

Counter-Statement of the Case

In addition to those so fairly set forth in appellant's statement, a few other facts and circumstances are deemed essential to a clear understanding of the questions presented:

1. When the case was called in open court (R. 5), the trial judge immediately noted that since no request for jury trial was in the file, he took it that no right was being taken from the accused in proceeding without a jury. Counsel for appellant then stated he wished to proceed without a jury, and the trial went forward.[6]

2. The arresting officer testified (R. 17) that while in charge of what is known as the "censorship bureau" of the Detroit police department in 1954, a book entitled "The Devil Rides Outside," written by John H. Griffin and published by Pocket Books, Inc., had been brought to his attention by the Ludington News Company, local distributor of "Pocket Books" in Detroit. The court, however, cut off this line of inquiry by sustaining an objection of defense counsel to a question whether this book had been submitted to the witness for approval before it was placed on sale, on the ground that the offense charged was the sale of the book. And the judge likewise sustained a similar objection (R. 18) to further questions which might draw out the fact

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[6]

Under Michigan law the constitutional right to trial by jury in a misdemeanor case tried by a justice of the peace, may be waived. Code of Criminal Procedure, Chap. 3, § 3 [Comp. Laws 1948, § 763.3 (Mich. Stat. Ann. 1954 Rev. § 28.856)]. People v. Henderson, 246 Mich. 481.

that when the book came to his attention the officer consulted with the prosecuting attorney and placed the book upon the prohibited list.[7]

3. It is also permissible to note that during his argument of appellant's motion to dismiss, defense counsel agreed (R. 10) that if the ruling on such motion should be in his favor, the paper book in question would appear in drug stores and book stores, and so forth, for sale, freely accessible throughout the entire community.

On this subject, the executive vice-president of Pocket Books, Inc., publisher of this book (R. 42) testified (R. 46) that his company does no advertising on books but "puts them through racks which you've seen in drug stores, cigar stores, that is all." Approximately 50% of its outlets are drug stores while the rest would be made up of five and ten-cent stores, department stores, cigar stores and news-stands (R. 49). In the drug stores they are displayed. If a book such as this is permitted to go out through the company's usual channel of sale and distribution, it would ultimately appear in the drug stores and in the dime stores, of the city

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[7]

It should be noted at once that Michigan has no censorship law placing prior restraints upon the publication or sale of books. Law and Contemporary Problems, Vol. XX, p. 648, "The Doctrine of Prior Restraint," by Thomas I. Emerson, Yale University.—The "censorship bureau" to which Inspector Case refers, is conducted by the Detroit police department under a wholly voluntary arrangement with book distributors in cooperation with the prosecuting attorney upon whose advisory opinions all rely in their determination to protect youth from the evil effects of obscene literature. Please see law review article, "Literature, the Law of Obscenity, and the Constitution," Minnesota Law Review, Vol. 38, p. 295 at p. 314, for a description of the Detroit plan. There is, however, no statutory authority for such a system and it is wholly extra-legal. Our position is that it is not presently involved.

of Detroit and state of Michigan. It is a fact that some of these drug stores and other places mentioned, sell school supplies and some of these stores are located near schools. They are prominently displayed "in places where schools are right near (R. 50)."

Moreover, this witness admitted in response to a question from the bench (R. 50) that covers are placed on such books with the idea in mind that "if you can make it look good, somebody will probably buy the book." And he further testified (R. 50):

> "We attempt to make the cover as honest a representation as we can of the contents inside the book, and to have a copy when the space is available, also carry out that theme and have it an attractive package for eye-appeal as we do within the bounds of good taste."

Corroborative testimony to this effect (R. 165-168) was also adduced from the executive secretary of the Detroit Retail Druggists Association.

4. When the arresting officer testified (R. 19) that he had taken 101 excerpts from the book, upon which he based his request for a warrant (R. 21), such passages were offered and received in evidence (R. 21-23) as People's Exhibit 2 (R. 252-295) over counsel's objection based on the doctrine that the book must be viewed as a whole and that any other view, permitting it to be judged by excerpts, would violate the prevailing rule in obscenity cases.[8] The court ruled (R. 23) as follows:

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[8]

This brings into focus the conflict between the Hicklin rule of Lord Cockburn, Regina v. Hicklin, L.R., 3 Q.B. 360 and the so-called "modern rule" first applied in United States v. One Book, Ulysses, 72 F. 2d 709.

". . . I have not read the complete book. I intend to. Now, whether I base my decision on the complete book afterwards or the excerpts contained in there will be a matter for my opinion there (then). So, without passing on that matter now, I am going to permit the excerpts in evidence, merely to facilitate the questioning, identification, rather than having the book brought in and marked and then remarked, and so forth. In other words, to expedite the handling of the trial."

5. We feel that counsel's summary, brief, pp. 22-23, of the testimony of Professor Hollis (R. 212-228), a witness for the State, should be supplemented as follows:

Asked by the prosecutor (R. 216) whether those excerpts from the book appearing in People's Exhibit 2, detracted from its literary merit, the witness replied it was not the material in such passages which did so, but the way in which they were treated. Prompted by leading questions from the bench, he replied he meant it is the author's method of handling such passages, rather than the incidents, his minute descriptive detail of sensual feelings of the sex act; the author could have said the same thing in another way without making the book offensive at all. In other words, it was important to the theme of the novel, as the witness saw it, that the temptations of the flesh be understood from the point of view of the reader. Description of temptations of the flesh as presented here was not seen by the witness as an item in the conflict presented as a theme of the novel, but rather as a separate "spirit" (spur?) to the sexual appetite of the reader, rather than it should have been, connected with the theme of the novel.

On cross-examination (R. 217), judging the work as a whole, Professor Hollis did not find a sincerity of purpose. The conflict was not made sufficiently apparent to him

(R. 218); the conflict between the spiritual against the flesh was not, to him, convincing. The sex act in itself in normal circumstances is a healthy thing; here, it is made a morbid thing. The man's attraction to sexual acts in isolated passages of the book. While he might say that might be in a facet of human life, he did not think the author universalized it to him in a sense "that he's made it convincing to him as a normal person, representative person's reaction to the problems of life, problems of conquering one's appetites, and so on." The witness likened the book (R. 221) to Daniel DeFoe's "Moll Flanders," which he stated was written for the market and had sex passages inserted to permit the reader to vicariously enjoy things he could not enjoy in life (R. 251).

6. Finally, it is our interpretation of the decision of the trial judge (R. 230-232), that while he held the appellant guilty (R. 232) because he sold a book containing language set forth in the excerpts, he also found "that even viewing the book as a whole, it was not necessary to the proper development of the theme nor the conflict expressed therein."

VII

Summary of Argument

In considering the constitutional questions presented by appellant, the statute involved should, if fairly possible, be construed to avoid any doubt of its validity.[9] Section 343 of the Michigan Penal Code is to be viewed only as applied in this particular case to a low-priced, paper-bound edition of a book "containing" obscene descriptions, prominently

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[9]

Panama R. Co. v. Johnson (1924), 264 U.S. 375, 390; Everson v. Board of Education (1947), 330 U.S. 1, 6, 7; Salsburg v. Maryland (1954), 346 U.S. 545, 553; United States v. Harriss (1954), 347 U.S. 612, 618.

displayed for sale in drug stores and other places frequented by adolescent school children (R. 10, 46, 49, 50); and one should disregard any hypothetical, marginal or borderline case that could be put where doubts might arise;[10] nor is the Court concerned with a licensing act imposing prior restraint upon the sale of books, or authorizing censorship by some administrative agency.[11] Reasonably interpreted within its current setting in the case at bar, the Michigan enactment proscribing the sale of such books does no violence to the Free Press Clause of the First Amendment or Due Process Clause of the Fourteenth Amendment.

1. Since the police power of a State is sufficiently broad to cover and safeguard the peace, health, safety, morals and welfare of the people, the Michigan legislature violated no constitutional principles in prohibiting acts thought to bring evil to the public through the sale of books "containing" obscene descriptions tending to corrupt the morals of youth.[12] One closes his eyes to reality when he

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[10]

United States v. Petrillo (1947), 332 U.S. 1, 7; United States v. Harriss (1954), 347 U.S. 612, 618.

[11]

Counsel for the Metropolitan Detroit Branch of the American Civil Liberties League, appearing amicus curiae, is mistaken in his thought that this is a censorship case and he relies upon numerous newspaper articles and law review comments which appellee is not permitted to meet by cross-examination or competent proof. Moreover, appellant's counsel cut off such an inquiry when in the trial court he objected to such testimony and was sustained (R. 18).

[12]

The broad reach of police power reserved to the States and expressly delegated to the Congress, has been recognized by this Court in recent decisions. Kovacs v. Cooper (1949), 336 U.S. 77, 83; Breard v. Alexandria (1951), 341 U.S. 622, 642; Daybrite Lighting Co. v. Missouri (1952), 342 U.S. 421; and Berman v. Parker (1954), 348 U.S. 26, 33.

intimates that such corrupting influences exerted upon adolescents does not affect the public health, safety, morals or general welfare of all citizens. Moreover, there was proof at the trial (10, 46, 49, 50) indicating the probable audience of this particular book and it is fairly to be inferred from competent testimony that it was to be specifically directed to young readers. We respectfully submit the measures adopted by the legislature in 1838 and since retained in the body of Michigan law, are not arbitrary and oppressive.[13]

2. The Michigan statute uses the word "obscene" in its commonly-accepted sense and does not by connected phrases ["tending to the corruption of the morals of youth"] establish vague or indefinite standards of conduct. The opinion of this Court in *Winters v. New York* (1947), 333 U.S. 507, 511, 520, as explained in *Kovacs v. Cooper* (1949), 336 U.S. 77, 80, draws its own distinctions,[14] while in other cases cited on pp. 36-37 of counsel's brief,[15] the Court struck down legislative acts because they established systems of administrative censorship and sanctioned "previous re-

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[13]

The conflict between the Hicklin Rule (Regina v. Hicklin, L.R., 3 Q.B. 360) and the "Modern Rule" advocated in United States v. Ulysses (1933, 1934), 72 F. 2d 705, 707-708), will be discussed under our third point.

[14]

In Kovacs, after distinguishing the section of the N.Y. penal code condemned in Winters from the following section which dealt with obscenity, Mr. Justice Reed said: "Neither the States nor Congress are prevented by the requirement of specificity from carrying out their duty of eliminating evils to which, in their judgment, such publications give rise."

[15]

Burstyn v. Wilson (1952), 343 U.S. 495, followed without opinion, or per curiam in Superior Films v. Dept. of Education (1954), 346 U.S. 587 (concurring opinion by Mr. Justice Douglas), and Holmby Productions, Inc. v. Vaughan (1955), 350 U.S. 870.

straints," not because they contained vague or indefinite terms.

3. Meeting appellant's point "D," brief, pp. 38-41, that "because it prohibits the distribution of a book 'containing' *any* obscenity, the Michigan statute violates the constitutional guarantees of freedom of press and due process of law," it is our position: (a) that the Michigan law when reasonably construed, does not obviate application of the "book-as-a-whole" rule announced in *United States v. Ulysses,* 72 F. 2d 705; (b) that doubt is cast upon applicability of such a rule as a constitutional test to determine whether Michigan, in exertion of her police power, may by this statute protect her youth from the corrupting influence of books which are obscene in part, as well as citizens of the State from the evil effects thereof; indeed it might be said that Michigan would violate no constitutional principle should she choose to retain what some critics regard as an outmoded rule of the much-condemned Victorian standards of decency;[16] (c) even though the rule in *Ulysses* must be applied, it clearly appears that the book in question, as distributed in a cheap, paper cover edition, with suggestive "blurbs" and pictures, through drug store outlets frequented by school children of adolescent and inquiring minds, is dominantly obscene; (d) while the court below may have laid emphasis upon excerpts from the book (People's Exhibit 2, R. 252-294), nevertheless it clearly appears from the entire record that the trial judge gave due consideration to the "book-as-a-whole," finding it to be such; and (e) if the court erred in failing to apply the

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[16]

Judge Stephens of the 9th Circuit has well said: "The civilization of our times holds to the premise that dirt in stark nakedness is not generally and at all times acceptable. And the great mass of the people still believe there is such a thing as decency." Besig v. United States (1953), 208 F. 2d 142.

Ulysses rule as a *factual* test, a point we do not concede, this Court, without invalidating the statute itself and dealing it a death blow, could order a new trial with instructions to view the book "as a whole" and decide whether it is dominantly obscene as here applied.

VIII

The Argument

Preliminary Considerations:

1. Since the statute here assailed on constitutional grounds, has been retained by the Michigan legislature for at least 118 years,[17] and has gone unchallenged for over a century, it comes into this Court with strong presumptions favoring its validity, to be construed, if fairly possible, to avoid any doubt of its constitutionality, and without regard for any marginal case that could be put where doubts might arise,

Panama Railroad v. Johnson (1924), 264 U.S. 375, 390;

Everson v. Board of Education (1947), 330 U.S. 1, 6-7;

Salsburg v. Maryland (1954), 346 U.S. 545, 553;

United States v. Harriss (1954), 347 U.S. 612, 618; citing, *United States v. Petrillo* (1947), 332 U.S. 1, 7.

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[17] Legislative intent to retain § 343 of Michigan's Penal Code as an expression of the conscience of the people of that State, was manifested when the section was recently amended by Pub. Acts 1953, No. 74 by adding the clause "tending to incite minors to violent or depraved or immoral acts."

2. The Court is therefore invited to lay aside the thought of any book which in the future may be condemned by a Michigan court because it contains a word, a phrase, a paragraph or a chapter of obscene import, unrelated to the main theme of the novel, for such is not the situation in the case at bar. Nor should the Court consider the lengthy list of books found in the brief of *amicus curiae*,[18] and said by its counsel to have been declared offensive by the Detroit police censorship bureau.

a. The court below, in sustaining an objection raised by counsel for appellant (R. 17, 18), refused to consider any prohibited list of books prepared by the witness Inspector Case.[19] And the trial judge was meticulous in enforcing his ruling throughout the proceedings which led to appellant's conviction.

b. Although counsel for appellant, who on behalf of his client had control of this litigation so far as his interests are concerned, shut out all reference to the Detroit censorship system (R. 17, 18), and made no direct claim that the

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[18]
Memorandum for Metropolitan Detroit Branch, American Civil Liberties Union, Amicus Curiae.

[19]
The witness Inspector Case was asked by the prosecutor (R. 17) whether the book had been submitted to him before it was placed on sale; counsel for appellant immediately interposed his objection and was sustained when the court below said: "The offense charged here is . . the sale of the book. Let's get right down to whether he bought a book or whether he didn't, from this defendant." When the witness was asked whether he had consulted with the prosecuting attorney and placed the book on the prohibited list, defense counsel renewed his objection (R. 18). The court ruled: "I don't care whose list it was placed on. The question is, did he buy it, is it obscene. . . . I can't be controlled by any one's list. I have to make up my mind."

Michigan statute placed "previous restraint" upon the sale or distribution of books claimed to be obscene, yet despite this fact of record, counsel for *amicus curiae, supra* (note 18), throughout his memorandum overstresses this point, insisting that the Detroit police censorship bureau operates to place prior restraints upon the sale of books which it has condemned as obscene, and he has, after apparent painstaking research, compiled references to newspaper articles, legal publications, law reviews, and congressional committee proceedings, all of which, we respectfully submit, are irrelevant to a review of the record of the court below.[20]

1

Reasonably interpreted within its current setting in the case at bar, the Michigan statute does no violence to the Free Press Clause of the First Amendment or the Due Process Clause of the Fourteenth Amendment.

On page 28 of his brief, counsel for appellant states that "the Michigan statute here in question is a criminal statute and as such must be strictly construed." Such is not the rule in Michigan. The Penal Code of that State, Chap. 1, § 2 [Comp. Laws 1948, § 750.2 (Stat. Ann. § 28.192)] expressly provides that "the rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed accord-

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[20]

It will be found, we think, that many of such law review articles were written by special pleaders strongly opposed to the "Detroit Plan." See, esp., law review article entitled "Literature, the Law of Obscenity, and the Constitution," Minnesota Law Review, Vol. 38, p. 295 at p. 314. While we hold no brief for this plan in the case at bar, we have been informed that the system is wholly voluntary and that it is joined by book distributors in the city of Detroit on that basis.

ing to the fair import of their terms, to promote justice and to effect the objects of the law."

It is of course true, as stated by counsel, that the constitutional validity of the act has not been passed upon by the State's highest court, and that the Supreme Court denied appellant's application for leave to appeal, although the prosecuting attorney suggested it be granted because, in his opinion, a clarification of the language of the statute was necessary (R. 397). We cannot agree, however, that this is of any significance. The Supreme Court exercised its discretion in denying leave to appeal, without opinion, and was not bound to adopt the prosecutor's suggestion.[21] Nor does it follow that the Supreme Court of Michigan adopted the construction given the statute by the court below. And we do not agree with counsel's version of the ruling of the trial judge.[22] Nor are we in accord with counsel's contention "that this Michigan statute, on its face and as applied, involves very manifest infringements of his (appellant's) constitutional rights of freedom of press and due process of law," or that for this reason the judgment of the court below should be reversed.

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[21]

Although we cannot speak for the Michigan Supreme Court, it may well be that the judicial conscience was so inexpressibly shocked by the dominant indecency of the book that they rejected the application for leave to appeal on that ground. In any event, it was an exercise of judicial discretion.

[22]

This point will be discussed under another head.

A. Since the police power of a State is sufficiently broad to cover and safeguard the peace, health, safety, morals and welfare of the people, the Michigan statute violates no constitutional principles in prohibiting acts thought to bring evil to the public through the sale of books containing obscene descriptions tending to corrupt the morals of youth.[23]

The long reach of broad police power reserved to the States by the 10th Amendment, or expressly delegated to the Congress to be exercised within federal fields of regulation or proscription, has been recognized by this Court in comparatively recent decisions,

Kovacs v. Cooper (1949), 336 U.S. 77, 83;

Breard v. Alexandria (1951), 341 U.S. 622, 642;

Daybrite Lighting Co. v. Missouri (1952), 342 U.S. 421;

Berman v. Parker (1954), 348 U.S. 26, 33.

Thus, in *Kovacs, supra,* 336 U.S. at p. 83, Mr. Justice Reed, announcing the judgment of the Court and an opinion in which the Chief Justice and Mr. Justice Burton joined, had this to say:

> "The police power of a State extends beyond health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquillity of a community. A state or city may prohibit acts or things reasonably thought to bring evil or harm to its people."

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[23] This phase of the question is discussed in appellant's Brief as counsel's point "B," pp. 32-35.

The same Justice, speaking for the Court in *Breard, supra,* 341 U.S. at 642, said:

> "The First and Fourteenth Amendments have never been treated as absolutes. Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."

So, too, it has been said, this Court's recent decisions make plain that the Court does not "sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." State legislatures "have constitutional authority to experiment with new techniques; they are entitled to their own standards of the public welfare." Mr. Justice Douglas in *Daybrite, supra,* 342 U.S. at 423.

Appellant's argument runs something like this: (1) he complains, brief, p. 32, that the Michigan statute by its terms "lowers the permissible standard of adult reading to a child's level"; counsel asserts that the case at bar "did not deal with any actual or specifically intended distribution of the book to any minor," nor was there proof at the trial, brief, p. 33, "indicating the probable audience of this book or that it was specially directed to young readers." (2) Conceding that the police power of a State "encompasses the protection of the morals of youth," appellant argues that the Michigan statute employs "excessive means to combat the evil; legislation which arbitrarily and oppressively infringes on the appellant's freedom of press." And, he argues, brief, p. 35, that "in the protection of the interests of those who might be *abnormally susceptible,*" the court below was necessarily required to eliminate the

interests of those "who might have profited from the work." Finally, (4) counsel contends that the rule of the *Hicklin* case (*Queen v. Hicklin* [1868], L.R. 3 Q.B. 360, 371) can never comport with requirement of freedom of the press, "because it operates as a restricted license to publish and distribute only those works which might have no ill effects upon the young."

1. As stated in our summary of the argument, one closes his eyes to reality when he intimates, as does counsel, that the corrupting influence of an obscene book exerted upon adolescents does not affect the public health, safety, morals or general welfare of *all* citizens within the state. To expand this statement would tend merely to uphold the wisdom of the legislation, with which courts have no concern, *Daybrite Lighting Co. v. Missouri* (1952), 342 U.S. 421, 423.

And, as pointed out in our summary, indeed throughout this brief, there *was* proof at the trial (R. 10, 46, 49, 50) indicating the probable audience of THE DEVIL RIDES OUTSIDE, and that it was to be specifically directed to young readers. Suffice it to note that the Court is not presently troubled by a book as published in hard-cover and distributed through a book-of-the-month club, or through regular channels of the trade at prices ranging from $3.00 to $4.00 or higher. Such books, although containing obscene descriptions, and this seems to be the "enlightened" trend of the modern novel, are not ordinarily purchased by school children with moderate "allowances," and, as we have seen, this particular piece of literature was placed on the restricted shelf of the Detroit Public Library beyond reach of those who, because of their youth and adolescent curiosity, might be intrigued by its contents.

On the contrary, THE DEVIL RIDES OUTSIDE was published by a firm engaged in distribution of such litera-

ture in pocket-size, paper-covered books, designed, as the proofs show, for sale at a low price to school children who frequent drug stores and other places where they are distributed.

We respectfully submit that to forbid the sale of such books as may contain obscene descriptions tending to corrupt the morals of youth, is well within the police power of the States.

2. Nor does this statute, as here applied, employ constitutionally excessive or arbitrary means to combat the evil sought to be curbed. In our view, evil which tends to corrupt the morals of youth, may be checked by any reasonable legislative measures, while the question of means lies wholly within the discretion of the lawmakers.

Of course, as this Court noted in cases cited in appellant's brief, p. 33,

> *Treigle v. Acme Homestead Association* (1936), 297 U.S. 189, 197;
>
> *Liggett Co. v. Baldridge* (1928), 278 U.S. 105, 111-112,

though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end "which is in fact public and the means adopted must be reasonably adapted to that end and must not be arbitrary and oppressive" (*Treigle, supra,* Headnote 7).

In the case of *Liggett, supra,* the Court struck down as invalid, a state statute forbidding any corporation to own a pharmacy or drug store in addition to those owned at the time of the enactment, unless all of its stockholders were

licensed pharmacists, as applied to a foreign corporation which owned such stores under license of the State, and sought to extend its business by acquiring and operating others. The Court said among other things, id., p. 113:

> "A state cannot, "under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

We respectfully submit that the Michigan statute prohibiting distribution of books containing obscene descriptions "tending to the corruption of the morals of youth," is an exercise of the police power for an end which is in fact public, rather than private, and that reasons may be assigned for the exertion of that broad power.

B. The Michigan statute uses the word "obscene" in its commonly-accepted sense does not by connected phrases [e.g., "tending to the corruption of the morals of youth"] establish vague or indefinite standards of conduct.

Contending that the Michigan statute defines obscenity in vague and indefinite terms and that hence its restrictions on the sale of obscene literature do not comport with due process, brief, pp. 35-38, counsel cites in support of his position,

Winters v. New York (1947), 333 U.S. 507;

Burstyn v. Wilson (1952), 343 U.S. 495;

Gelling v. Texas (1952), 343 U.S. 960;

Superior Films, Inc. v. Department of Education (1954), 346 U.S. 587;

Holmby Productions, Inc. v. Vaughan (1955), 350 U.S. 870.

1. The general rule, of course, is that a criminal statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application, lacks the first essential to due process of law.[24]

Mr. Justice Holmes, however, in *United States v. Wurzbach* (1930), 280 U.S. 396, 399, said:

> "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk."

Thus it follows that though there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls, this is not sufficient reason to hold the language too ambiguous to define a criminal offense,

Mr. Justice Black for the Court in

United States v. Petrillo (1947), 332 U.S. 1, 7.

It was also held in *Petrillo, supra,* that impossible standards of specificity are not required, a principle recognized by Mr. Chief Justice Vinson in later decisions,

Jordan v. De George (1951), 341 U.S. 223, 231;

Dennis v. United States (1951), 341 U.S. 494, 515.

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[24] The general rule is well stated in Connolly v. General Construction Co. (1926), 269 U.S. 385.

2. The decision of this Court in *Winters, supra,* invalidated subsection 2 of § 1141 of the New York Penal Law, as construed by the State Court of Appeals to prohibit distribution of a magazine principally made up of news or stories of criminal deeds of bloodshed or lust so massed as to become vehicles for inciting violent and depraved crimes against the person, holding it so vague and indefinite as to violate the Fourteenth Amendment by prohibiting acts within the protection of the guaranty of free speech and press.

As later explained in *Kovacs v. Cooper* (1949), 336 U.S. 77, 79-80, by the same justice who wrote for the Court in *Winters,* he had pointed out in the opinion that prosecutions might be brought under statutes punishing the distribution of "obscene, lewd, lascivious, filthy, indecent or disgusting" magazines. The Court had said in *Winters,* p. 518:

> "The impossibility of defining the precise line between permissible uncertainty in statutes caused by describing crimes by words well understood through long use in the criminal law—obscene, lewd, lascivious, filthy, indecent or disgusting—and the unconstitutional vagueness that leaves a person uncertain as to the kind of prohibited conduct—massing stories to incite crime—has resulted in three arguments of this case in this Court."

And on page 520:

"To say that a state may not punish by such a vague statute carries no implication that it may not punish circulation of objectionable printed matter, assuming that it is not protected by principles of the First Amendment, by the use of apt words to describe the prohibited publications. Section 1141, subsection 1, quoted in note 2, is an example. Neither

the states nor Congress are prevented by the requirement of specificity from carrying out their duty of eliminating evils to which, in their judgment, such publications give rise."

The other cases cited in appellant's brief, have little, if any bearing on this problem. Since the "chief purpose" of the constitutional guaranty of liberty of the press is "to prevent previous restraints upon publication," *Near v. Minnesota,* 283 U.S. 697, 713, and inasmuch as Michigan's legislative proscription of the obscene does not establish censorship, counsel's position is not sustained by *Burstyn, Gelling, Superior Films,* or *Holcomb Productions, supra.*

Burstyn v. Wilson, supra, 343 U.S. 495, condemns provisions of the New York Education Act which forbid the commercial showing of any motion picture film without a license and authorize denial of a license on a censor's conclusion that a film is "sacrilegious," as a prior restraint on freedom of speech and of the press under the First Amendment, made applicable to the States by the Fourteenth Amendment. *Gelling v. Texas, supra,* 346 U.S. 960, merely followed *Burstyn* and *Winters,* with a concurring opinion by Mr. Justice Frankfurter that in his view the ordinance in question lacked definiteness, and a concurring opinion by Mr. Justice Douglas condemning the evil of prior restraint through censorship. Likewise, *Superior Films, supra,* 346 U.S. 587, merely reversed judgments of Ohio and New York without opinion, on the strength of Burstyn, while Mr. Justice Douglas and Mr. Justice Black, concurring, once again cited *Near v. Minnesota, supra,* 283 U.S. 697, in condemning censorship. And the Court reversed the judgment in *Holcomb Productions, supra,* 350 U.S. 870, on like authority. Obviously, since the Michigan legislature has not set up censorship over the sale of books, these decisions are inapplicable.

3. Had the Michigan statute prohibited the sale of any book "tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth," and prescribed punishment therefor, we might be in trouble. When, however, these words are coupled with such phrases as "obscene, immoral, lewd or lascivious . . . descriptions," they take on a clear and definite meaning. Any truly obscene descriptions, such as we find in the book before the Court, would irrevocably tend to corrupt the morals of youth. We respectfully submit that the language of this statute is sufficiently clear, definite and certain to meet the constitutional requirement of specificity and that it should not be struck down as invalid.

C. The Michigan statute does not violate constitutional guarantees of freedom of press and due process of law, because it prohibits distribution or sale of a book "containing" obscenity.

Counsel urge that § 343 of the Michigan Penal Code by use of the word "containing" obviates a fair consideration of the work as a whole, or the dominant purpose of the publication, thus impinging on the guaranteed constitutional freedom of press. And it is said that "at present, most federal and state courts in which the question has been considered, have explicitly adopted the requirement that a book must be judged as a whole, not by its parts taken out of context," citing:

United States v. One Book-Ulysses, 2 Cir., 72 F 2d 705;

United States v. Levine, 2d Cir., 83 F. 2d 156;

Parmalee v. United States, D.C. Cir., 113 F. 2d 729;

Walker v. Popenoe, D.C. Cir., 149 F. 2d 511;

Halsey v. N.Y. Society, 234 N.Y. 1, 4;

Commonwealth v. Gordon, 66 Pa. D. & C. 101; affirmed sub. nom. *Commonwealth v. Feigenbaum*, 166 Pa. Super. 120; 70 A. 2d 389;

State v. Lerner (Ohio C.P. 1948), 81 N.E. 2d 282;

New American Library of World Literature v. Allen, N.D. Ohio, 114 F. Supp. 823.

a. Section 343 of the Michigan Penal Code among other things proscribes the sale of "any book . . . *containing* obscene descriptions . . . manifestly tending to the corruption of the morals of youth," and it is upon the word "containing" that appellant's counsel lay stress. It is noteworthy, however, that the section does not read "containing *any* obscene . . . descriptions" and as we view it, if the *Ulysses* rule is applicable, the book in question here may be judged as a whole, or its dominant effect may be considered. It is on this ground, we think, that the Ohio cases cited in appellant's statement may be distinguished from the case at bar and one from the other.

Thus in *State v. Lerner, supra*, (Ohio C.P. 1948), 81 N.E. 2d 282, Judge Struble considered and struck down as unconstitutional § 13035 G.C.O., as amended, which penalized the sale etc. of an obscene book, magazine, etc., "*not wholly obscene* but containing lewd or lascivious articles, advertisements" etc. But in *New American Library of World Literature v. Allen*, 114 F. Supp. 823, the court held that a city ordinance prohibiting sale or distribution of any book etc. "of *any* obscene or immoral nature" might be read as proscribing books of "*an*" obscene or immoral nature, and as thus read, the ordinance might be construed in harmony with the modern test of obscenity as not proscribing books that merely contain "*some*" obscenity. Thus construed, the validity of the ordinance was upheld as

against the contention that it violated freedom of the press[25]

b. It is significant, however, that the "modern rule" had its genesis in *United States v. One Book-Ulysses, supra,* not as a test of constitutionality under the First and 14th Amendments, but rather as a rule of statutory construction or as a test to determine as a matter of fact in a given set of facts and circumstances whether a designated book was "obscene." Thus, in *Ulysses* it was stated at the outset of Judge Augustus Hand's opinion that the appeal "raises sharply the question of the proper interpretation of section 305 (a) of the Tariff Act of 1930 (19 USCA § 1305-a)." And he concluded that the book as a whole did not fall within the statute. Judge Manton, who for all his subsequent faults, was a good lawyer and sound judge, vigorously dissented.[26]

No statute was declared infirm by the second circuit in *United States v. Levine,* 83 F. 2d 156, but there the charge of the trial judge led to error in construing and applying the postal laws. The instruction deemed erroneous was to the effect that in a prosecution for sending obscene advertisements through the mails, the statute was to protect the young and immature and ignorant and those who were sensually inclined and that the jury should regard the effect of books on their minds rather than on mature and highly intelligent people, and that the statute condemned a

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[25]

What was condemned in this case and duly restrained by injunction was a censorship conducted by a chief of police without, however, imposing any restraint upon his power to enforce the ordinance by arrest and prosecution.

[26]

Citing: Rosen v. U.S., 161 U.S. 29; Dunlop v. U.S., 165 U.S. 486; U.S. v. Dennett, 39 F. 2d 564 and others.

book which contained a single passage which would excite lustful or sensual desires. While the court deemed this instruction reversible, Judge Learned Hand added, p. 157, that "our reversal does not mean that on another trial the proper standard can under no circumstances refer to adolescents," stressing the distinction between a sale to a youth and a general sale.[27]

In *Parmalee v. United States,* D.C. Cir., 113 F. 2d 729, another prior restraint upon publication was involved, libel, confiscation and destruction of an obscene book so alleged under the Tariff Law of the United States. The court repudiated the Hicklin Rule, Mr. Associate Justice Vinson dissenting in a well-reasoned opinion, 113 F. 2d at 738.

An order of a postmaster barring plaintiff's pamphlet from the mails *without a hearing* was deemed a violation of due process in *Walker v. Popenoe,* D.C. Cir., 149 F. 2d 334.

Section 1141 of the New York Penal Law provides that a person who sells any obscene, lascivious, indecent or disgusting book is guilty of a misdemeanor. The defendant in *Halsey v. New York Society,* 234 N.Y. 1, by complaint lodged with a magistrate caused the arrest and prosecution of the plaintiff for selling such a book and the latter was acquitted. He brought suit for malicious prosecution. The court of appeals held, *inter alia,* that in such an action

> "whether a book, the work of a great author, written in admirable style, which has become a part of classical literature and which has been widely sold but which

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[27] At bar, while the sale was in a sense "general," 50% of the books were sold in drug stores where school children congregate and where school supplies are sold.

> contains many indecent paragraphs, is of such a character as to justify the reasonable belief that its sale was a violation of section 1141 of the Penal Law, is a question for and properly submitted to the jury in an action for malicious prosecution. . . . "

Certain it is that in *Halsey*, the New York statute was not deemed unconstitutional.

While it is true that constitutional considerations governed state courts in the Pennsylvania and Ohio cases cited by appellant, his counsel, unless we are much mistaken, has failed to point to a Federal decision striking down a State law on the ground that its provisions obviated application of the so-called "modern rule." The closest approach to consideration of such a question was *Doubleday & Co., Inc. v. New York,* 335 U.S. 848, affirming by equally divided vote, and without opinion, a conviction under Section 1141 of the New York Penal Law. In fact, no opinions were written by any court, except for a dissenting opinion by Judge Perlman.

c. During oral presentation of the case of *Doubleday* to this Court, 17 LW 3119, while speaking of a book which in our view "contains" obscenity and pornography in lesser volume that those passages found in THE DEVIL RIDES OUTSIDE, counsel for the State of New York merely said:

> "The statute on which the judgment rests is valid. A reading of the book by this Court will demonstrate that the finding of obscenity is reasonable. I therefore submit that the judgment below should be affirmed."

We would close with this thought: the book now under scrutiny is, we respectfully submit, dominantly porno-

graphic as tested by the Hicklin Rule or the modern doctrine. This is not a borderline case. The day may come when a book will be condemned by some Michigan court because it contains a paragraph or two of obscene import. Here, however, the entire volume is permeated with obscenity.

d. As stated in our summary, while the court below may have taken into account certain passages from the book, there is little doubt that he also considered the volume as a whole with such excerpts restored to context. When Exhibit 2 was first offered in evidence by the State, the trial judge did not admit it in order that excerpts might be stripped from context and considered as obscene passages (R. 23). He took the position that although he had not read the complete book, he intended to do so. Whether he based decision on the complete book afterwards or the excerpts contained therein, would be a matter for his opinion. So, without passing upon the question then, he admitted the excerpts in evidence

> "merely to facilitate the questioning, identification, rather than having the book . . . marked and . . . remarked. . . . In other words, to expedite the . . . trial."

At the close of the trial, in his opinion from the bench (R. 230-232), the court below closed with the following words:

> "I am holding that the defendant is guilty because he sold a book in the city of Detroit containing this language, and also because the court feels that even viewing the book as a whole, it was not necessary to the proper development of the theme of the book nor of the conflict expressed therein."

e. Finally, it might be added, if this Court should find that the trial judge erred in failing to apply the rule in *Ulysses*, and that he did not consider and appraise the book as a whole, this would not necessarily mean that the statute itself is unconstitutional, for the error, if so found, could be corrected in a new trial.

IX

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the recorder's court of the City of Detroit should be affirmed and the Michigan statute presently involved be sustained as against the constitutional objections urged.

Respectfully Submitted,

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SEP 28 1956
JOHN T. FEY, Clerk

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. [redacted] 16

ALFRED E. BUTLER,
Appellant,

vs.

STATE OF MICHIGAN
Appellee.

MEMORANDUM FOR METROPOLITAN DETROIT BRANCH, AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 548

ALFRED E. BUTLER,
Appellant,

vs.

STATE OF MICHIGAN
Appellee.

MEMORANDUM FOR METROPOLITAN DETROIT BRANCH, AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

The Metropolitan Detroit Branch of the American Civil Liberties Union is a voluntary association of residents of Detroit, Michigan, and the adjoining metropolitan area who are interested in the protection and furtherance of constitutional liberties. Its members include adult readers of pocket books, parents of child readers and students under the age of twenty-one years. All of these persons are affected by the issues presented in this cause.

The following memorandum in behalf of the local branch is submitted with the written consent of counsel for both parties.

STATEMENT

Defendant Alfred E. Butler on June 16, 1954 in the City of Detroit sold a pocket sized copy of a novel, "The Devil Rides Outside," by John H. Griffin, to Herbert W. Case, the then inspector in charge of the License and Censor Bureau of the Detroit Police Department (18-19). This was a fifty-cent edition of a book which as a hard-cover volume was available at the Detroit Public Library (24).

The book was described as "a serious work of literature" by Professor Sculley Bradley of the University of Pennsylvania (59, 72) and as a "novel of great literary merit" by Associate Professor Frank L. Huntley of the University of Michigan (106). Professor Charles Carroll Hollis, of the University of Detroit, who testified for the People, described it as "a well intentioned book that is not completely successful" (213); he compared it in this regard to "Moll Flanders" of Daniel Defoe which he regarded as an unsuccessful work (221). The trial court found that there was little question of the author's sincerity of purpose in writing the book which sought to portray the conflict in the protagonist between "desires for sexual and sensual pleasures, and the longing for a spiritual life and control over his desires" (231-232). However, the court concluded (232) that the book contained "lewd, immoral, obscene and lascivious language or description" and offended the provisions of C. L. 1948,

§750.343, Mich. Stats. Ann., §28.575 which read (237-238):

> "Any person who shall import, print, publish, sell, possess with intent to sell, design, prepare, loan, give zine, newspaper, writing, pamphlet, ballad, printed paper, print, picture drawing, photograph publication or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education or shall buy, procure, receive, or have in his possession, any such book, pamphlet, magazine, newspaper, writing, ballad, printed paper, print, picture, drawing, photograph, publication or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into any family, school or place of education, shall be guilty of a misdemeanor."

The Court concluded that "even viewing the book as a whole," the offensive language was "not necessary to the proper development of the theme of the book nor of the conflict expressed therein" (232). The court found that the statute was validly enacted and was not inconsistent with federal and state constitutional guarantees (231). The defendant was found guilty and a fine imposed. The State Supreme Court declined review and probable jurisdiction was noted by this Court.

Inspector Case, the purchaser of the book, testified that he was attached to the License and Censor Bureau of the Detroit Police Department since 1937, and for some five years was in charge of its work (17). In such capacity he appeared and testified in December, 1952, before the so-called Gathings Committee and explained in detail the

operation of the Bureau[1]. He pointed out that the above-quoted statute was one of the principal vehicles through which his office prohibited the circulation of literary material which it deemed offensive.[2] He explained that the Bureau had been organized because news stands "were completely saturated with questionable materials, sexed up covers and so on, and the great number of complaints we received necessitated the organization of such specific bureau."[3] In 1950 or 1951 because of the "great amount of complaints" which "started coming in to us on the pocket-size books * * * it was necessary that we start screening these * * *."[4]

When an offensive book is found the Bureau does not proceed to prosecute sellers for violation of the statute; litigating the matter in court, Inspector Case explained, "lets a lot of people know about it. They get the front page publicity which they couldn't buy."[5] Rather, the two principal distributors of pocket books in Detroit were advised that certain volumes were deemed improper. When one of these distributors indicated some reluctance, Inspector Case testified that "we called them in, and we threatened prosecution * * *. We had them in a conference with the Wayne County Prosecuting attorney's office, and there they voluntarily agreed to submit to us for inspection the pocket-size magazines before distribution."[6]

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[1]Hearings before the Select Committee on Current Pornographic Materials, H. R. 82nd Cong., 2nd Sess., Dec. 1952, 112-143 (1953), hereafter cited as "Hearings."

[2]Hearings, 113.

[3]Hearings, 114.

[4]Hearings, 115-116.

[5]Hearings, 112.

[6]Hearings, 116. See also Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 28, 1952); Tendler, "City Censor's Influence Felt Over All U. S.," The Detroit News, part 1, p. 21, col. 1 (April 25, 1954).

The Bureau obtains volumes prior to their circulation in Detroit and determines whether or not their sale will be permitted. One publisher mentioned by Inspector Case submits new titles in manuscript form so that "deletions can be made before going to print."[7] This system of censorship is more effective, Inspector Case testified, for "if we can keep that thing (offensive material) out of circulation, and it doesn't hit the streets, why, we are accomplishing a lot more than attempting to do something about it after it has gained its objective of being circulated."[8]

The Detroit Police Department has jurisdiction, of course, only within the City of Detroit itself; this limitation was overcome by the License and Censor Bureau early in its history through arrangements with the Prosecuting Attorney for Wayne County so that the influence of the Bureau became county-wide.[9] Mr. Case also recognized that "we are in a position of 'big brother' to smaller communities."[10] In 1952 the Bureau was distributing its list of proscribed books to some seventeen or eighteen other Michigan communities[11] as well as to communities outside of the state. The Bureau makes its lists available to law enforcement agencies throughout the country upon request.[12] Inspector Case stated he had answered in excess of 10,000 letters from around the country on comic books alone.[13] As a result, Inspector Case conceded that the De-

[7]Hearings, 128.

[8]Hearings, 122. Every book banned by the Bureau has been withdrawn from circulation. Hearings, 116.

[9]Hearings, 116. See also Lockhart & McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 314-315 (1954).

[10]Hearings, 134.

[11]Hearings, 131.

[12]Hearings, 134.

[13]Hearings, 132.

troit system of censorship "probably" affects the entire national circulation of pocket books.[14] This appears to be an understatement.[15]

At the time of his Congressional testimony Inspector Case stated that the Bureau operated with only twelve employees handling its censorship functions[16] and it was necessary for the police officers on the staff to spend many hours on their own time reading obscene materials.[17] "It became necessary," Inspector Case stated, "that we undertake a terrific job to screen those things with a very small staff of men. Now, it is far from being fool-proof. We do screen them through what we call skimming off the filth, so to speak * * *."[18] Though the staff has not increased significantly, the activities of the Bureau have steadily grown. In 1950 it reviewed some 167 books of which 30 were withheld; it estimated that the books withheld represented some 295,000 copies.[19] In the following year, 1951, of some 726 books reviewed, 39 were excluded, representing some 400,000 copies.[20] For 1954 the Bureau reported that it reviewed 1,047 books and excluded 53 representing an estimated 480,000 copies.[21] At the time

[14]Hearings, 130.

[15]Sonderegger, "What Detroit Censors May Affect All U. S.," Minneapolis Star, p. 46, col. 1 (Feb. 11, 1953); Lardner, "Let 'Em Eat Newspapers," Newsweek 92 (March 14, 1955); Tendler, "City Censor's Influence Felt All Over U. S.," The Detroit News, pt. 1, p. 21, col. 1 (April 25, 1954); Lockhart & McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 316 (1954). The experience of Youngstown, Ohio with the Detroit list is illustrated in *New American Library of World Literature* v. *Allen*, 114 F. Supp. 823 (N. D. Ohio, 1953). See also 1 Censorship Bulletin of American Book Publishers Council No. 2, p. 4 (March, 1956); Blanshard, The Right to Read 184-185 (1955); St. John Stevas, Obscenity and the Law 171-173 (1956).

[16]Hearings, 113.

[17]Hearings, 135.

[18]Hearings, 116.

[19]Hearings, 136.

[20]Hearings, 137.

[21]89th Annual Report of Detroit Police Department 107 (1954).

this case arose it was announced that the Bureau had reviewed more than 3,000 books, of which 192 had been ruled "objectionable" and 46 "partially objectionable."[22]

It is not clear whether the Bureau pursues its reviewing function with respect to hard cover or bound volumes. It has been variously stated in the public press that it does not inspect such volumes[23] and that such books are reviewed when a "complaint" is received.[24] The standards by which pocket books are judged by the Bureau are not too clear; in his testimony Inspector Case suggested that "excessive profanity" or "lewd and lascivious" language or detailed descriptions of erotic experience as well as the "general continuity and tenor" of a story may all, presumably, be grounds for considering a book objectionable.[25] Mr. Case stressed that pocket editions of standard works may be published with "sexed up covers" which, apparently, may make the books objectionable for this reason alone.[26] Since the books are not obtainable in Detroit, it is not possible for this *amicus curiae* to determine how these standards are interpreted and applied by the Bureau, although it would seem, as indicated hereinafter, that any reference to sex, whether by physician, psychoanalyst or novelist, risks classification as obscene by the Bureau. The member of the Wayne County Prosecuting Attorney's office who has long worked intimately with the

[22]"Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954). More recently the figure has been put at 400 volumes representing a circulation of 4,000,000 copies. "Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955).

[23]"Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954).

[24]Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 29, 1952).

[25]Hearings, 120-121. The Detroit Council of Churches recently noted that a volume on sex education, which it recommended, had been proscribed. Portions had been found "too stimulating". "Sex Education Book Ban Spurs Restudy of 'Slichs'," The Detroit News, p. 18, col. 1 (Sept. 18, 1956).

Bureau, has indicated the standard applied by him: "We're policemen, not censors * * *. If I feel that I wouldn't want my 13 year old daughter reading it, I decide it's illegal. Mind you, I don't say it is illegal in fact, I merely say that in my opinion it would be a violation of law to distribute it. The distributors usually cooperate by withholding the book."[27]

Mr. Case is no longer in charge of the Bureau but his "philosophy" is said to have continued without interruption.[28] Melville E. Bullock, the present head of the Bureau, has perpetuated the censorship procedure for pocket books. "If we find a book we consider unfit," he stated soon after he took office, "we ask the distributor to withdraw it from the dealers. Generally there is compliance. We have not had much trouble here."[29] Detroit has approximately 2,500 retail outlets for pocket books.[30] At the time of Inspector Case's Congressional testimony there had never been a prosecution involving distribution of any pocket book[31] and the present case is the only instance of such a prosecution since.[32] Detroit continues to be known as the nation's "capitol of police censorship of paperbooks."[33]

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[26]Hearings, 133.

[27]Tendler, "Detroit Book Censorship a Model for Other Cities," The Detroit News, p. 16, col. 1 (May 5, 1955); Publishers Weekly 218 (Jan. 21, 1956). See also Tyler, "Censor Cites Need for Crackdown by U. S.," Detroit Free Press, p. 18, col. 4 (March 16, 1953).

[28]Tendler, "Detroit Book Censorship a Model for Other Cities," The Detroit News, p. 16, col. 1 (May 5, 1955).

[29]"Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955). Mr. Bullock recently pledged extension of these operations. "Ban on 'Girlie' Mags Sought," Detroit Free Press, p. 20, col. 1 (Sept. 20, 1956).

[30]Hearings, 122; Hartmann, "Pocket Size Books Give Police Censors Biggest Headache," The Detroit News, p. 12, col. 2 (Dec. 29, 1952).

[31]Hearings, 117.

[32]"Screen Mail for Filth, Censor Advises Parents," The Detroit News, p. 37, col. 3 (Oct. 19, 1955).

[33]Publishers Weekly 218 (Jan. 21, 1956)

The public which spends thousands of dollars annually to finance the work of the Bureau,[34] is not advised of the pocket books the Bureau keeps from the reading audience of Detroit. No list of titles is contained in the annual reports of the Bureau. Efforts to determine the facts are strenuously discouraged. Inquiry by a member of the State Bar of Michigan in behalf of a prospective book seller met with the reply "Our list of books which have been found to be in violation of the State Statutes is not available to the public but is strictly police information."[35] Presumably, sellers of pocket books are not normally furnished lists of volumes deemed objectionable by the Bureau; circulation of this information is confined to the large distributors and to those dealers who make substantial purchases from non-local sources.

Despite the Bureau's policy, after considerable effort by this *amicus curiae,* inspection was made of the lists of books which the Bureau deems offensive. The lists are in mimeographed form and appear to be supplemented each month. They are entitled "Detroit Police Department, License and Censor Bureau" and bear the legend:

> "The following listed titles of pocket size books are those which have been found to be in violation of the Michigan State Statutes by the Wayne County Prosecuting Attorney's office."

There follows a list of titles, author, publisher and the "date withheld" by the Bureau. There are hundreds of volumes on such lists including materials no doubt similar to those considered in *Hannegan v. Esquire, Inc.,* 327 U. S. 146. There are also works of more serious intention and significance. The following volumes are taken from such mimeographed lists:

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[34]Hearings, 125.
[35]Letter from Inspector Melville E. Bullock, May 17, 1956.

Book Title	Author	Publisher	Date Withheld
Carlotta	Robert Briffault	Avon Pub. Co.	10-28-50
Geraldine Bradshaw	Calder Willingham	Avon Pub. Co.	10-10-51
Wintertime	Jan Valtin	Rinehart Books	10-17-51
Sexual Feeling in Married Men and Women	G. Lombard Kelly, M.D.	Pocket Books, Inc.	10-24-51
Wine of Violence	Ralph Ingersoll	Popular Libr. Co.	3-4-52
A World I Never Made	James T. Farrell	New Amer. Libr.	3-14-52
Story of My Psychoanalysis	John Knight	Pocket Books, Inc.	5-19-52
End as a Man	Calder Willingham	Avon Pub. Co.	6-13-52
Sex Life of the Single, The Married & the Engaged	Maurice Chedeckel, M.D.	Eugenics Pub. Inc.	7-11-52
Gas House McGinty	James T. Farrell	Avon Pub. Co.	9-5-52
The Farmer's Hotel	John O'Hara	Bantam Books, Inc.	12-3-52
Don't Touch Me	McKinlay Kantor	Bantam Books, Inc.	12-30-52
Across the River and Into the Trees	Ernest Hemingway	Dell Pub. Co.	1-26-53
Lord God of the Flesh	Jules Romains	Pocket Books, Inc.	2-13-53
The Bastard	Erskine Caldwell	Novel Selections	2-16-53
Revolt of Mamie Stover	Wm. Bradford Huie	New Amer. Libr.	2-16-53
Catcher in the Rye	J. D. Salinger	New Amer. Libr.	3-16-53

Book Title	Author	Publisher	Date Withheld
Back of Town	Maritta Wolff	New Amer. Libr.	4-7-53
Barbary Shore	Norman Mailer	New Amer. Libr.	5-15-53
An American Dream	James T. Farrell	New Amer. Libr.	7-22-53
From Here to Eternity	James Jones	Fawcett Pub., Inc.	7-14-53
Intimacy	Jean Paul Sartre	Avon Pub. Co.	11-6-53
Father and Son	James T. Farrell	New Amer. Libr.	12-16-53
Sexual Practices of American Women	Christopher Gerould	Lion Book	2-9-54
Sex After 40	S. A. Lenin, M.D. John Gilmore, Ph.D.	Dell Pub. Co.	2-19-54
The Devil Rides Outside	John H. Griffin	Pocket Books, Inc.	2-26-54
1919	John Dos Passos	Pocket Books, Inc.	4-6-54
Naked to My Past	Frederic Wakeman	Pop. Libr. Inc.	11-3-54
Psychology of Sex	Havelock Ellis	New Amer. Libr.	11-18-54
Magnificent Bastard	Lucy Herndon Crockett	Dell Pub. Co.	1-4-55
Mud on the Stars	William Bradford Huie	New Amer. Libr.	1-7-55
Blackboard Jungle	Eva Hunter	Pocket Books, Inc.	3-21-55
History of Prostitution	George Ryley Scott	Medical Press of N.Y.	5-31-55

Book Title	Author	Publisher	Date Withheld
Sexual Conduct of the Teen Ager	Jules Archer and Dr. S. V. Lawton	Berkeley Pub. Co.	6-8-55
This Thing Called Love	Edited by Marc Slonim and Harvey Breit	New Amer. Libr.	9-14-55
Death on the Instalment Plan	Louis Ferdinand Celine	Avon Pub. Co.	10-18-55
Nights of Love and Laughter	Henry Miller	New Amer. Libr.	11-16-55
The World in the Evening	Christopher Isherwood	Pop. Libr. Inc.	11-16-55
An Act of Love	Ira Wolfert	Pocket Books, Inc.	11-21-55
Somebody up there Likes Me	Rocky Graziano	Pocket Books, Inc.	3-14-56
Aboard the Flying Swan	Stanley Wolpert	Pocket Books, Inc.	4-17-56
Facts of Life and Love for Teen Agers	Evelyn Millis Duvall	Pop. Libr. Inc.	3-22-56
Blaze of Noon	Rayner Heppenstall	Berldey Pub. Co.	5-4-56
The Wine of Youth	Robert Wilder	Bantam Books, Inc.	5-17-56
The Girl in Dogwood Cabin	Calder Willingham	New Amer. Libr.	6-15-56
A Devil in Paradise	Henry Miller	New Amer. Libr.	7-13-56
Intimacy	Jean Paul Sartre	Berkeley Pub. Corp.	8-17-56
Waterfront	Budd Schulberg	Bantam Books, Inc.	8-22-56

ARGUMENT

I. The Statute on Its Face Does Not Meet Due Process Requirements.

The Michigan statute is so drawn that it prohibits distribution of "any book * * * containing obscene, immoral, lewd or lascivious descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth * * *." Such words as "obscene, immoral, lewd or lascivious," are rooted in cultural patterns which are themselves difficult to determine and more difficult to regard as stable.[36] Whether such words, standing alone, have such definiteness of connotation as to meet the standards demanded of a criminal statute by the Fourteenth Amendment is seriously to be doubted. But the words do not stand alone in the Michigan statute prohibiting material which must not only be "obscene, immoral, lewd or lascivious," but must meet additional requirements. These requirements are set forth as parallel criteria: (1) a tendency to incite minors to violent or depraved or immoral acts, and/or (2) a tendency to corrupt the morals of youth. It is not clear whether these two criteria are to be read alternatively and independently or cumulatively. They are obviously different. One applies to "minors," which presumably means any one under twenty-one years of age. The other applies to "youth," an infinitely hazier category which could be

[36]See LaBarre, "Obscenity: An Anthropological Appraisal," 20 Law & Contemp. Prob. 533 (1955); Kaplan, "Obscenity as an Esthetic Category," 20 Law & Contemp. Prob. 544 (1955); Lockhart and McClure, "Literature, the Law of Obscenity and the Constitution," 38 Minn. L. Rev. 295, 374 (1954).

broader or narrower than "minors." The first criterion contemplates material tending to incite violence, depravity or immorality; the second refers to that which "manifestly" tends to the corruption of youthful morals. The statute requires that some distinction be made between mere tendencies and manifest tendencies, however difficult it may be to determine the difference.

What varieties of "violent or depraved or immoral acts" are contemplated is no less clear. "Violence" can refer to the customary acts of mayhem by a ten-year-old toward his five-year-old sister; the phrase is not confined to criminal violence. Nor is it clear that immorality and the corruption of morals are limited to matters of sex; if they extend to any violation of what may be deemed the moral law in a particular community, the difficulties are compounded.[37] Whether both these indefinite criteria must be read to qualify the general classification of "obscene, lewd or lascivious descriptions" or whether it is enough if either is met cannot confidently be ascertained from a reading of the statute. The statute itself contains a treacherous fundamental ambiguity which makes it impossible fairly to determine the measure of its exaction. This would seem a fatal defect. *Connally v. General Construction Co.*, 269 U. S. 385, 391; *Joseph Burstyn Inc. v. Wilson*, 343 U. S. 495, 503-504; *Superior Films v. Department of Education*, 346 U. S. 587.

The peculiar language of the Michigan statute engenders another basic difficulty. Whether the reading of offensive literature actually causes crime, or violent or depraved conduct is far from clear. See *Winters v. New York*,

[37]It need hardly be noted, for example, that vagrancy and truancy are made attractive by Tom Sawyer and Huckleberry Finn despite local policy to the contrary. Municipal Code of Detroit, Ch. 223, Sec. 4 (1954); C. L. 1948, §367.1.

333 U. S. 507, 527. If the legislature had merely outlawed all material of a well-defined class in the belief that it was thereby reducing the causes of anti-social conduct, there might be little occasion to review its motives or the soundness of its medical, penological or psychological views. But the Michigan Legislature has not here categorically and unqualifiedly prohibited all "obscene, immoral, lewd or lascivious" materials; the statute is not the fruit of a legislative finding or opinion on the supposed connection between salacious literature and substantive social evils. Rather, the statute transfers to the court the need for a determination that the objectionable material tends to incite violence or depravity or immorality or manifestly tends to corrupt youthful morals. In the present state of our scientific knowledge it is doubtful that such a judicial finding could ever be soundly reached and defended. Here, there was no evidence whatever that any minor or member of "youth" had actually read the pocket edition of "The Devil Rides Outside" in the City of Detroit or elsewhere or that such reading produced any of the deleterious consequences predicted. Nor was there testimony by witnesses expert in psychology, medicine or kindred fields which established as a matter of scientific fact or even of probability that the substantive evils feared would result from the reading of such novel. The conclusions to this effect by the trial judge (231) were necessarily gratuitous; by reason of the language of this statute deficiencies in the proofs could hardly be supplied by presumptions of law, technical notions of the burden of proof or presumptions concerning the well-springs of juvenile conduct. Conviction for a crime, one of whose ingredients is never established would seem constitutionally indefensible.

II. The Statute Is Discriminatory and Unequal in Its Application.

The freedom of expression through published pocket books is peculiarly fulfilled when such books are available on dealers' shelves to attract the attention of the casual browser. Undeniably, many books are bought and read, not because they are indexed in a public library catalogue or advertised in the literary magazines but because they are displayed, seen and handled by their prospective audience. With the increase in costs, many readers have been priced out of the market for hard cover volumes costing three dollars or more. The dramatically lower price of the paperbook volume has certainly contributed heavily to its appeal and popularity.

The reader who could afford to purchase "The Devil Rides Outside" in a hard cover edition such as in the Detroit Public Library may read it, apparently, undisturbed by any of the provisions of C. L. 1948, §750.343, Mich. States. Ann., §28.575. This is true whether such reader is a "youth" or a "minor" or an octogenarian. He is free to look at the bound volume displayed at a book store in Detroit, to glance through it and determine if it appeals sufficiently to justify the purchase. If, upon taking it home, his morals are corrupted, it is a consequence ignored by the License and Censor Bureau, at least in the absence of a "complaint." The statute, as systematically applied and enforced, is thus directed against the reader, not of different literary appetites or moral susceptibilities, but of scantier purse. This is an impermissible basis for enforcement. *Griffin v. Illinois*, 351 U. S. 12.

It may be true that here are persons who would notice pocket books displayed in a soda bar or a drug store and

who would not normally haunt establishments where bound volumes are sold. Among such persons may well be minors and youth sufficiently mature to serve in the armed forces, to attend colleges and universities and also to be interested in matters regarded by the Detroit Police Department as "objectionable." It may even be assumed that the legislature might regard children of tender years deserving of special protection from the reading material which is thus circulated to interest or titillate their elders. But the statute in question does not distinguish between sales in bookstores and drugstores in the City of Detroit. It does not define obscenity in terms of the hardness of a volume's cover. The statute as it is drawn and as it is applied cannot be used exclusively for the "protection of children" without interfering inescapably with the rights of expression and information of others who are not children. We do not believe that the freedom of press and the freedom to read which are constitutionally guaranteed permit incursions or interferences so grossly framed.

III. The Detroit Censorship Imposes Invalid Prior Restraint Upon Literary Expression.

This case has been reported in the Detroit press as a "friendly test case."[38] The sale of a copy of "The Devil Rides Outside" to Inspector Case was predicted before it took place[39] The book was placed on the Bureau's list of offensive books in February, 1954 and an effort was made to show this at the trial (17-18). The testimony was excluded upon the objection of the defendant but it is no

[38]"Detroit's Ban of Books Gets Court Review," The Detroit News, p. 8, col. 1, (Feb. 28, 1956).

[39]Tyler, "Police Book Ban Faces Court Test," Detroit Free Press, p. 6, col. 4 (June 16, 1954).

secret that this was not a prosecution which resulted from a casual sale of a volume thereafter determined to offend the statute. Censorship of pocket books is so universal in Detroit and exclusion of books at the will of the law enforcement authorities is so complete that only with the cooperation of the Bureau could a justiciable issue be framed.

The Detroit program constitutes a systematic "substitution of the prosecutor's caprice for the adjudicatory process." *Berra v. United States,* 351 U. S. 131, 140. Nothing in the published utterances of the Detroit Police Department's License and Censor Bureau or in its activities for the past decade attests to its peculiar competence in the field of literary criticism, or as arbiter of public taste or interpreter of the moral cross-currents of our society. Yet by regular notorious prior restraint large numbers of books by accredited authors are excluded from the bookshelves of one of the Nation's largest metropolitan centers. The Bureau then shrouds its operations in secrecy so that it escapes the curbs of public opinion. This is censorship at its unconstitutional worst. *Near v. Minnesota ex rel. Olson,* 283 U. S. 697; *Joseph Burstyn, Inc. v. Wilson,* 343 U. S. 495.

CONCLUSION

Accordingly, the Metropolitan Detroit Branch of the American Civil Liberties Union believes that the conviction should be set aside because the statute on which it is predicated is invalid.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1956.
No. 16

ALFRED E. BUTLER,

Appellant,

vs.

STATE OF MICHIGAN,

Respondent.

Motion for Leave to File Petition to Intervene, or in the Alternative, for Consolidation of Cases.

David S. Alberts, petitioner herein, alleges:

1. That he is the appellant in *David S. Alberts v. State of California,* October Term, 1956, No. 61, filed April 10, 1956.

2. In his jurisdictional statement petitioner Alberts claimed, *inter alia,* that the term "obscene" is unconstitutionally vague and unconfined and a censorial proscription of ideas and speech violating freedom of press and speech under the First and Fourteenth Amendments to the United States Constitution.

3. The Court has not yet passed upon petitioner's jurisdictional statement. From petitioner's position on the Court's calendar (No. 61) it appears reasonable that the Court may be deferring consideration of petitioner's jurisdictional statement until it has decided the instant case.

4. It appears from the excerpts of the argument in the instant case reported in 25 L. W. 3117 that the Court

was concerned with the question whether the statutory term "obscene" in a state criminal enactment is unconstitutionally vague and/or offensive to free speech. It further appears that the Court may decide or consider such question in the instant case.

5. Although petitioner Alberts in his jurisdictional statement asserts that the term "obscene" is unconstitutionally vague, the appellant Butler in the instant case took the contrary position as appears from the following colloquies reported in 25 L. W. 3117 *et seq.*:

(A) "Mr. Justice Frankfurter: You mean that 'obscene' satisfies the Winters case?

Mr. Robbins: Agreed."

(B) "Mr. Chief Justice: Does the statute say the criterion is 'obscene'?

Mr. Robbins: No—containing obscenity.

[Mr. Chief Justice]: Without the qualifying phrase (tending to incite minors to violent, depraved or immoral acts) you would think the statute is all right?

[Mr. Robbins]: Yes, provided the word 'containing' was also eliminated from the statute."

(C) "Mr. Justice Black: What does it [obscene] mean?

Mr. Robbins: There have been various meanings but I believe dirt for dirt's sake.

Mr. Justice Black: Is that a constitutional test?

Mr. Robbins: It is the best I have been able to arrive at.

Mr. Justice Black: Why is it less vague than immoral?

Mr. Robbins: I think people deal with earthy things and over years of experience get what is permissible through experience."

(D) "Mr. Justice Frankfurter: It may be a satisfactory test even though it is not as precise as an algebraic equation?

Mr. Robbins: Yes."

6. In the event the Court should determine or assume in the instant case—without adversary presentation or argument—that "obscene" is a constitutionally satisfactory standard, one of petitioner Alberts' principal issues will be seriously adversely affected.

7. Since appellant Butler did not take the position that "obscene" is unconstitutionally vague, and since this is a question of considerable importance transcending in law and reach the individual interests of the parties in the instant Butler case, and since a correct determination of this issue is vital to petitioner Alberts' interests, he respectfully requests:

(A) Permission to intervene in the instant case and to appear herein by brief on the issue of the constitutionality of the standard "obscene"; or

(B) In the alternative, for a consolidation of the two causes herein considered, namely, *Butler v. State of Michigan,* October Term, 1956, No. 16, and *Alberts v. State of California,* October Term, 1956, No. 61.

Respectfully submitted,

STANLEY FLEISHMAN,

Attorney for Petitioner David S. Alberts, Appellant in David S. Alberts v. State of California, October Term, 1956, No. 61.

WILLIAM B. MURRISH, and
BROCK, EASTON, FLEISHMAN & RYKOFF,
Of Counsel.

SUPREME COURT OF THE UNITE STATES

No. 16.—October Term, 1956

Alfred E. Butler, Appellant, v. State of Michigan. | On Appeal I m the Recorder's C rt of the City of D roit, Michigan.

[February 25, 1957.]

Mr. Justice Frankfurter delivered the o nion of the Court.

This appeal from a judgment of convictio entered by the Recorder's Court of the City of Detroi Michigan, challenges the constitutionality of the followi provision, § 343, of the Michigan Penal Code:

> "Any person who shall import, print, blish, sell, possess with the intent to sell, design, p pare, loan, give away, distribute or offer for sale, any ok, magazine, newspaper, writing, pamphlet, ba d, printed paper, print, picture, drawing, photogra , publication or other thing, including any recordi s, containing obscene, immoral, lewd or lascivious nguage, or obscene, immoral, lewd or lascivious pri , pictures, figures or descriptions, tending to incit minors to violent or depraved or immoral acts, man stly tending to the corruption of the morals of yo h, or shall introduce into any family, school or pla of education or shall buy, procure, receive or ve in his possession, any such book, pamphlet magazine, newspaper, writing, ballad, printed p er, print, picture, drawing, photograph, publicati or other thing, either for the purpose of sale, exh tion, loan or circulation, or with intent to introdu the same into any family, school or place of edu ion, shall be guilty of a misdemeanor."

Appellant was charged with its violation for selling to a police officer what the trial judge characterized as "a book containing obscene, immoral, lewd, lascivious language, or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." Appellant moved to dismiss the proceeding on the claim that application of § 343 unduly restricted freedom of speech as protected by the Due Process Clause of the Fourteenth Amendment in that the statute (1) prohibited distribution of a book to the general public on the basis of the undesirable influence it may have upon youth; (2) damned a book and proscribed its sale merely because of some isolated passages that appeared objectionable when divorced from the book as a whole; and (3) failed to provide a sufficiently definite standard of guilt. After hearing the evidence, the trial judge denied the motion, and, in an oral opinion, held that ". . . the defendant is guilty because he sold a book in the City of Detroit containing this language [the passages deemed offensive], and also because the Court feels that even viewing the book as a whole, it [the objectionable language] was not necessary to the proper development of the theme of the book nor of the conflict expressed therein." Appellant was fined $100.

Pressing his federal claims, appellant applied for leave to appeal to the Supreme Court of Michigan. Although the State consented to the granting of the application "because the issues involved in this case are of great public interest, and because it appears that further clarification of the language of . . . [the statute] is necessary," leave to appeal was denied. In view of this denial, the appeal is here from the Recorder's Court of Detroit. We noted probable jurisdiction. 350 U. S. 963.

Appellant's argument here took a wide sweep. We need not follow him. Thus, it is unnecessary to dissect the remarks of the trial judge in order to determine

whether he construed § 343 to ban the distribution of books merely because certain of their passages, when viewed in isolation, were deemed objectionable. Likewise, we are free to put aside the claim that the Michigan law falls within the doctrine whereby a New York obscenity statute was found invalid in *Winters* v. *New York*, 333 U. S. 507.

It is clear on the record that appellant was convicted because Michigan, by § 343, made it an offense for him to make available for the general reading public (and he in fact sold to a police officer) a book that the trial judge found to have a potentially deleterious influence upon youth. The State insists that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely, this is to burn the house to roast the pig. Indeed, the Solicitor General of Michigan has, with characteristic candor, advised the Court that Michigan has a statute specifically designed to protect its children against obscene matter "tending to the corruption of the morals of youth." * But the appellant was not convicted for violating this statute.

We have before us legislation not reasonably restricted to the evil with which it is said to deal. The incidence of this enactment is to reduce the adult population of Michi-

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*Section 142 of Michigan's Penal Code provides:

"Any person who shall sell, give away or in any way furnish to any minor child any book, pamphlet, or other printed paper or other thing, containing obscene language, or obscene prints, pictures, figures or descriptions tending to the corruption of the morals of youth, or any newspapers, pamphlets or other printed paper devoted to the publication of criminal news, police reports, or criminal deeds, and any person who shall in any manner hire, use or employ such child to sell, give away, or in any manner distribute such books, pamphlets or printed papers, and any person having the care, custody

gan to reading only what is fit for children. It thereby arbitrarily curtails one of those liberties of the individual, now enshrined in the Due Process Clause of the Fourteenth Amendment, that history has attested as the indispensable conditions for the maintenance and progress of a free society. We are constrained to reverse this conviction.

Reversed.

MR. JUSTICE BLACK concurs in the result.

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or control of any such child, who shall permit him or her to engage in any such employment, shall be guilty of a misdemeanor."

Section 143 provides:

"Any person who shall exhibit upon any public street or highway, or in any other place within the view of children passing on any public street or highway, any book, pamphlet or other printed paper or thing containing obscene language or obscene prints, figures, or descriptions, tending to the corruption of the morals of youth, or any newspapers, pamphlets, or other printed paper or thing devoted to the publication of criminal news, police reports or criminal deeds, shall on conviction thereof be guilty of a misdemeanor."